

Richardson, Robert

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THE
Attorney's Practice
IN
The Court of Common Pleas:
OR, AN
INTRODUCTION
TO THE

Knowledge of the Practice of that Court, as
it now stands on the Regulation of
several late acts of Parliament, Rules and
Determinations of the said Court:

WITH

Variety of useful and curious Precedents in *English*,
drawn or perused by Counsel; and a Complete
INDEX to the Whole.

By the Author of *The Attorney's Practice in the
Court of King's Bench.*

The **Second Edition**, with large **Additions**.

V O L. II.

In the SAVOY:

Printed by HENRY LINTOT, (Assignee of *Edw. Sayer, Esq;*)
for **T. Woodward**; and sold by **G. Hawkins** at *Milton's*
Head between the *Temple-Gates*, **T. Waller** at the *Mitre* and
Crown against *Fetter-Lane Fleetstreet*, and **J. Osborne** at the
Golden Ball in *Pater-noster Row*. M.DCC.XLVI.

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T H E

Attorney's Practice

I N T H E

Court of Common Pleas:

Abatement.

AND the said *E.* in her proper person comes and defends the force and injury, &c. And prays judgment of the said writ, because she says, that she on the day of suing out the said original writ of the said *R.* was under cover of one *W. J.* then and yet her husband, and alive, to wit, at London aforesaid, in the parish and ward aforesaid; And this she is ready to verify: Wherefore for that the said *W. J.* is not named in the said writ, the said *E.* prays judgment of the said writ, and that the same may be quashed, &c.

And the said *R.* says, that for the reason before alledged his said writ ought not to be quashed, because he says, that the said *E.* on the day of suing out the said

*Plea in abatement, deft. under cover-
ture at the
time of the
writ.*

Replication.

Traverse.

original writ of the said R. *to wit*, on the 1st day of *February* in the — year, &c. at *London* aforesaid, in the parish and ward aforesaid, was sole, *Without this*, that the said E. on the day of suing out the said original writ of the said R. was under cover of the said W. *ſ*. as her husband, as the said E. has above alledged: And this he is ready to verify: Wherefore for that the said E. does not deny the said action of the said R. the said R. prays judgment and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c.

Rejoinder.

And the said E. as at first says, that she on the day of suing out the said original writ of the said R. was under cover of the said W. as her husband, as she the said E. has above alledged; And of this she puts herself upon the country; *And* the said R. likewise, &c. *Therefore* it is commanded to the sheriff that he cause to come, &c.

Issue.

Another executor, not named in the writ.

And the said R. by R. R. his attorney, comes and defends the force, &c. And prays judgment of the said writ, because he says, that the said C. in his life-time constituted and appointed him the said R. and one W. C. to be executors of his testament, and afterwards died, after whose death the said W. as executor of the testament of the said C. administered divers goods and chattels which were of the said C. at the time of his death, *to wit*, at *West-*

Westminster in the county of *Middlesex* aforesaid, which said *W.* at *Westminster* aforesaid is still in being and alive; And this the said *R.* is ready to verify: Wherefore for that the said *W.* is not named in the writ aforesaid, the said *R.* prays judgment of the said writ, and that the said writ may be quashed, &c.

And the said *T.* says, that for the reason before alledged his said writ ought not to be quashed, because he says, that the said *W.* after the death of the said *C.* as executor of the testament of the said *C.* never administered any goods or chattels which were of the said *C.* at the time of his death; And this he prays, &c. *Replication.*

And now at this day, to wit, Friday next after the morrow of the holy *Trinity*, in this same term, to which day the said *P. D.* had leave to imparl to the said bill, and then to answer, &c. before our lord the king at *Westminster* comes as well the said *E. P.* by his said attorney, as the said *P.* by *J. G.* his attorney, and the said *P.* defends the force and injury when, &c. And prays oyer of the said writing; and Oyer.

it is read to him in these words, to wit, *Plac in abate-*
To all, &c. Which being read and heard, *ment, Vari-*
the said *P.* prays judgment of the said *ance between*
bill now exhibited against him, because he *the declara-*
says, that in the said bill there is material *tion and deed.*
variance between the said bill and the said
writing upon which the said declaration is
founded, as to the court here sufficiently
appears; And this he is ready to verify:

Wherefore for that variance the said P. prays judgment of the said bill, and that the said bill may be quashed, &c.

Plea in abatement in case sur assumpsit, Defendant infra ætatem.

And the said W. in his proper person comes and defends the force and injury above laid to his charge, and prays judgment of the said writ, because he saith, that he the said W. now is within the age of 21 years, (that is to say) of the age of 18 years, and no more, and was at that age, and no more, at the time of making those promises and undertakings, as by the abovesaid declaration of the said T. in manner and form aforesaid is declared: Wherefore the said W. prays judgment of the said writ, and that the same may be quashed, &c.

Replication for necessities.

And the said T. saith, he ought not to be precluded from his said action against him the said W. because he saith, that the said money so paid, laid out and expended, and the said several businesses by him the said T. done and performed for the said W. was necessarily paid, laid out, expended, done and performed for the necessary use and benefit of the said W. and in no other manner, as in the declaration of him the said T. in manner and form as above is declared: And this he prays may be inquired of by the country; &c.

Plea in abatement, Misnomer in the defendant's christian name.
C. B.

And John S. against whom the writ aforesaid issued by the name of T. S. in his proper person cometh and saith, that he was baptized by the name of John, and

and at the Time of the said *A*'s suing out the said original Writ was, and always before and since hath been called and known by the said Name of *John S.* that is to say, at *W.* aforesaid in the County of *M.* aforesaid; *Without that*, that he at the Time of the said *A*'s suing out his said original Writ, or any Time before or since, hath been or now is called by the Name of *Thomas S.* as by the said Writ is above supposed; And this he is ready to verify: Wherefore he prays Judgment of the said Writ, and that the said Writ may be quashed, &c.

W. Chapple.

And *Carolinus Smith*, against whom the Plea in Abatement, Misnomer in the Defendant's Christian Name, B. R. Lill. Ent. 6. Praet. Reg. 199. Carth. 207. said *Richard Griggs* by his Bill exhibited complains by the Name of *Charles Smith*, by *J. A.* his Attorney comes and defends the Force and Injury, &c. and prays Judgment of the said Bill, because he says that he was baptized by the Name of *Carolinus*, and by the same Name from the Time of his Baptism hitherto has been always known and named by the Name of *Carolinus*†; *Without this*, that he the said *Carolinus* now is or ever was known or named by the Name of *Charles*, as by the said Bill is above supposed; And this he is ready to verify: Wherefore he prays Judgment of the said Bill, and that the said Bill may be quashed, &c.

† The Traverse is material, for one may have a *Nomen* and *Cognomen* that never was baptized. *Salk. 6. 6 Mod. 115. Holt 492, 563.*

Martha Hinton Widow complains of *James Altham* and *Anne* his Wife, otherwise called *Anne Jesson*, of the City of *Coventry* Spinster, in the Custody of the Marshal, of a Plea that they render to her 400 l. (on a Bond made by the *Feme dum Sola*).

Plea in Abatement by Baron and Feme, Misnomer in the Wife. B. R.

And the said *James* and one — his Wife come in their proper Persons and defend the Force and Injury, and say that she the same — was baptized by the Name of —, and is, and from the Time of her Nativity hitherto was always known and named by the Name of —; *Without this*, that she the same — now is, or ever was known or named by the Name of *Anne*, as by the said Bill is supposed; And this they are ready to verify: Wherefore they pray Judgment of the said Bill, and that the said Bill may be quashed, &c. T. L.

Plea in Abatement, Misnomer in the Defendant's Christian Name, B. R.

M. 5 Ann Ro. 439.
Salk. 8, 712.
Carth. 207.
Lib. Placit. 1.

And *Lady Honoria Gerard*, against whom the said *Thomas* has exhibited his Bill by the Name of *Lady Elizabeth Gerard*, otherwise *Garret*, comes in her proper Person and defends the Force and Injury, &c. and prays Judgment of the said Bill, because she says that she was baptized by the Name of *Honoria*, to wit, at the Parish of *St. Clement Danes* aforesaid, and from her Baptism to this Time has always been known and named by that Name; *Without this*, that she the said *Honoria* now is or ever was known or named by the Name of *Elizabeth*, as by the said Bill is above sup-

Traversed.

supposed; And this she is ready to verify: Wherefore she prays Judgment of the said Bill, and that the said Bill may be quashed, &c.

And the said Thomas Stroud prays Day *Impar lance. to* to imparl to the said Plea; and it is granted *a Plea.*

to him, &c. And, upon this, Day is thereupon given to the Parties aforesaid, before our Lady the Queen, at *Westminster*, until Thursday next after the Octave of St. Hilary, to wit, to the said Thomas to imparl to the said Plea, and then to reply, &c.

At which Day, before our Lady the Queen at *Westminster*, comes as well the said Thomas Stroud by his Attorney aforesaid, as the said Defendant in her proper Person.

And the said Thomas prays Day to imparl *Further Impar lance.* further to the said Plea: And it is granted

to him, &c. And, upon this, Day is thereupon further given to the said Parties, before our Lady the Queen at *Westminster*, until Wednesday next after fifteen Days from the Day of Easter, to wit, to the said Thomas, to [*Verbatim ut antea, usque*]

her proper Person. And the said Thomas says, * that the said Lady Gerard, other-

Replication, Estoppel the Defendant put in Bail by the

* The putting in Bail is the Act of the Court, and *Name of Elizabeth.* not of the Party, and therefore cannot estop her; but the Defendant appearing by that Name, may estop himself, and Bail is an Appearance as well as Bail: But then it ought to be pleaded as an Appearance, if the Plaintiff would make use of that as an Estoppel. In Debt on a Bail-Bond, if the Defendant has put in Common Bail, he cannot plead he has put in Common Bail, but *Comperuit ad diem*, for he must plead according to the Operation Things have in Law. *Salk. 8.*

wife *Garret*, the Person against whom the said *Thomas* has exhibited his said Bill by the Name of Lady *Elizabeth Gerard*, otherwise *Garret*, ought not to be admitted to her said Plea for quashing the said Bill of the said *Thomas*, because he says that she the said Lady *Gerard*, otherwise *Garret*, the Person against whom the said *Thomas* in the Term of *St. Michael* last past exhibited his said Bill by the Name of Lady *Elizabeth Gerard*, otherwise *Garret*, in that same Term of *St. Michael* put in Common Bail in the Court here, at the Suit of the said *Thomas*, in the Plea aforesaid, by the Name of Lady *Elizabeth Garret*, as by the Record thereof remaining in the same Court of our said Lady the Queen, before the Queen herself at *Westminster*, more fully appears; And this he is ready to verify by that Record: Wherefore he prays Judgment if the said Lady *Gerard*, otherwise *Garret*, the Person against whom the said *Thomas* has exhibited his said Bill, by the Name of Lady *Elizabeth Gerard*, otherwise *Garret*, ought to be admitted to her said Plea for quashing his said Bill, contrary to the said Record, &c.

*Demurrer to
the Replica-
tion,*

And the said *Honoriam Gerard*, against whom the said *Thomas* has exhibited his said Bill by the Name of Lady *Elizabeth Gerard*, otherwise *Garret*, says, that the said Plea above in Replying pleaded by the said *Thomas* in Manner and Form aforesaid, and the Matter therein contained,
are

are not sufficient in Law to compel the said *Honor*a to answer the said Bill of the said *Thomas*; to which said Plea the said *Honor*a has no Need, nor is she obliged by the Law of the Land in any Manner to answer; And this she is ready to verify: Wherefore, for want of a sufficient Replication in this Case, the said *Honor*a, as before, prays Judgment of the said Bill, and that the said Bill may be quashed, &c.

And the said *Thomas* says, that the said Joinder. Plea above in Replying pleaded by the said *Thomas* in Manner and Form afore-said, and the Matter therein contained, are good and sufficient in Law to compel the said *Elizabeth* to answer to the said Bill of the said *Thomas* thereupon against the said *Elizabeth*; which said Plea, and the Matter therein contained, the said *Thomas* is ready to verify and prove, as the Court, &c. And because the said *Elizabeth* hath not answered to the said Plea, nor hitherto in any Manner denied the same, the said *Thomas* as before prays Judgment, and that the said *Elizabeth* may be compelled to answer to the said Bill of the said *Thomas*, &c. But because Continuance. the Court of our said Lady the Queen now here is not advised about giving Judgment of and concerning the Premises, Day is therefore given to the said Parties to come before our Lady the Queen at *Westminster*, until — next after —, to hear Judgment of and upon the same Premises, for that the Court of our said Lady

Lady the Queen now here is not advised thereof.

Plea in Abatement, the Want of Addition. C. B.

And the said *Philip Beach* in his own Person comes and prays Judgment of the original Writ of the said *Ambrose*, because he says, that by the Statute of Additions made and provided, every Defendant in every Writ in which Process of Outlawry lies, ought to be named and called in such Writ of a certain Mystery or Degree, whereof such Defendant is, or at the Time of obtaining such Writ was, or before had been; And this he is ready to verify: Wherefore, in as much as the said *Philip* by the said Original Writ is not called or named of any Degree or Mystery whatsoever, he the said *Philip* prays Judgment of the said Writ, and that the same may be quashed, &c.

W. Wynne.

Oyer prayed of Original in Homine replegiando. B. R.

Salk. 5, 705.

Plea in Abatement, no Addition of the Place of Defendant's Dwelling in the Writ.

1 H. 5. c. 5.

And the said *Thomas Woods* and *Mary* his Wife, by *Richard Ash* their Attorney, come and pray Oyer of the said Original Writ, and of the Return of the said Writ; and they are to read them in these Words, to wit, *Anne* by the Grace of God [The Writ and Return in *hæc verba*] Which being read and heard, the said *Thomas Woods* and *Mary* his Wife pray Judgment of the said Writ, because they say that by Form of the Statute the † Addition of the

† The Original Replevin is *Vicountiel*, and the Court proceeds upon the *Pluries*: Therefore the first Replevin needs no Addition within the Statute; and where

the Town or Hamlet, or Place and County of the Dwelling of the said *Thomas*, ought to be contained in the said Original Writ of the said *Charles* Earl of *Banbury*, and *Mary* Countess of *Banbury* his Wife; And this they are ready to verify: Wherefore, for that such Addition is not contained in the same Writ, the said *Thomas* and *Mary* pray Judgment of the said Writ, and that the said Writ may be quashed, &c.

And the said *Charles* Earl of *Banbury*, *Demurrer.* and the said *Mary* Countess of *Banbury* his Wife, say, that by any thing by the said *Thomas* and *Mary* above pleaded for quashing the said Writ, the Writ of the said Countess and Earl ought not to be quashed, because they say that the said Plea above pleaded by the said *Thomas* and *Mary* his Wife, in Manner and Form aforesaid, and the Matter therein contained, are not sufficient in Law to quash the said Writ of the said Earl and Countess; to which said Plea the said Earl and Countess have no need, nor are they obliged by the Law of the Land, in any manner to answer; And this they are ready to verify: Wherefore, for want of a sufficient Plea of the said *Thomas* and *Mary* in this Case, they the said Earl and Countess pray Judgment, and that the Writ of the said Earl

where the first Writ is without Addition, it cannot be necessary in the second; nay, the inserting such an Addition would vitiate the second Writ, for it cannot vary from the former. *Salk.* 5.

and

and Countess may be adjudged good, and that the said *Thomas* and *Mary* may answer further to the said Writ, &c.

Joinder.

And the said *Thomas* and *Mary* his Wife say, that the said Plea above pleaded by the said *Thomas* and *Mary*, in Manner and Form aforesaid, and the Matter therein contained, are good and sufficient in Law to quash the said Writ of the said Earl and Countess; which said Plea, and the Matter therein contained, they the said *Thomas* and *Mary* are ready to verify, as the Court, &c. And because the said Earl and Countess have not answered to the said Plea, nor as yet any ways denied the same, the said *Thomas* and *Mary*, as at first, pray Judgment of the said Writ, and that the said Writ may be quashed, &c. But because the Court of our said Lady the Queen now here is not yet advised about giving Judgment of and concerning the Premises, Day is therefore given to the said Parties to come before our Lady the Queen until ——— wheresoever, &c. to hear Judgment of and upon the same Premises, for that the Court of our said Lady the Queen now here is not yet advised thereof.

Continuance.

Plea in Abatement in Ejectionment, that the Lands are Parcel of the Manor of B. which is Ancient Demesne. B. R. Salk. 56, 775.

And the said *Simon Winch*, by *John Sandwell* his Attorney, comes and says, that the Tenements in the said Declaration above specified are, and from the Time to the contrary whereof the Memory of Man is not, have been Parcel of the Manor of *Bray* in the County aforesaid, of which said Manor our Lord the King and Lady the

the Queen are seised in Right of their Crown; and that the said * Manor is of the Antient Demesne of the Crown of our Lord the King and Lady the Queen; and that the said Tenements are impleadable and have been impleaded, from the Time to the contrary whereof the Memory of Man is not, in the Court of the said Manor by the small Writ of our Lord the King and Lady the Queen of Right close; And this he is ready to verify, as the Court shall consider, &c. Wherefore he prays Judgment if the Court of our Lord the King and Lady the Queen here will take Cognizance of the Plea thereupon, &c.

And the said *Thomas Barker* says, that *Demurrer*. by any thing by the said *Simon Winch* in pleading above alledged, the Court of our Lord the King and Lady the Queen here ought not to be barred from having Cognizance of the said Plea, because he says that the said Plea above pleaded by the said *Simon* in Manner and Form aforesaid, and the Matter therein contained, are not sufficient in Law to bar the said Court of our Lord the King and Lady the

* *Per Cur.* Supposing the Manor to be Antient Demesne, yet the Manor and the Demesnes of the Manor are impleadable at Common Law, and not in the Lord's Court, for then the Lord would be Judge in his own Cause. But Antient Demesne Lands, held of the Manors, are impleadable in the Court of Antient Demesne, and there only. *Salk.* 56. *Vide F. N. B.* 11. m. 1 *Roll.* 324.

Causes of Demurrer do not say the Lands are held of the Manor of B.

Joinder.

Queen now here from having Cognizance of the said Plea; to which said Plea, and the Matter therein contained, the said *Thomas Barker* has no need, nor is he obliged by the Law of the Land, in any manner to answer; And this he is ready to verify: Wherefore, for want of a sufficient Answer in this Case, the said *Thomas* prays Judgment, and his said Term yet to come of and in the Tenements aforesaid, with the Appurtenances, together with his Damages by occasion of the Trespas and Ejectment of Farm aforesaid, to be adjudged to him, &c. And for Causes of Demurrer in Law upon the said Plea, the said *Thomas*, according to the Form of the Statute in such Cases lately made and provided, shews and demonstrates to the Court here these Causes following, to wit, for that the said *Simon* has not in his said Plea shewed to the Court here, nor alledged that the said Tenements, with the Appurtenances mentioned in the said Declaration, or any Parcel of them, are held of our said Lord and Lady the present King and Queen, of their Manor of *Bray* aforesaid, and because the said Plea is uncertain, insensible, and wants Form.

And the said *Simon* says, that the said Plea above pleaded by him the said *Simon* in Manner and Form aforesaid, and the Matter therein contained, are good and sufficient in Law to bar the said Court of our Lord the King and Lady the Queen now here from having Cognizance of the said

saïd Plea; which saïd Plea, and the Mat-
ter therein contained, he the saïd *Simon*
is ready to verify and prove, as the Court,
Etc. And because the saïd *Thomas* has not
answered to the saïd Plea, nor as yet any
ways denied the same, he the saïd *Simon*
as at first prays Judgment if the Court of
our saïd Lord the King and Lady the
Queen now here, will or ought to take
Cognizance of the saïd Plea. But because
[Continuances to in Craft. Animar'] At which Continuances.

Day before our Lord the King and Lady
the Queen at *Westminster* the saïd Parties
come by their Attornies aforesaid. Where- Judgment,
upon the Court of our saïd Lord the King Respon-
and Lady the Queen now here having Ouster.

seen and fully understood all and singular
the Premisses, and having maturely deli-
berated thereupon, for that it appear'd to
the Court of our saïd Lord the King and
Lady the Queen now here, that the saïd
Plea above pleaded by the saïd *Simon* in
Manner and Form aforesaid, and the Mat-
ter therein contained, are not sufficient in
Law to bar the saïd Court of our saïd
Lord the King and Lady the Queen now
here from having Cognizance of the saïd
Plea, the saïd *Simon* is bid by the Court
to answer further to the Declaration.

Whereupon the saïd *Simon*, being solemnly Plea, Not
demanded, by the saïd *John Sandwell* his At- Guilty.
torney comes and defends the Force and
Injury when, Etc. and says, that he the
saïd *Simon* is in nothing guilty of the Tres-
pass and Ejectment aforesaid as the saïd
Thomas

Issue.

*Venire facias
by Original
awarded.*

Thomas above complains against him; And of this he puts himself upon the Country. And the said *Thomas* does so likewise, &c. Therefore it is commanded to the Sheriff that he cause to come before our Lord the King and Lady the Queen, on the *Octave* of the Purification of the Blessed *Mary*, wheresoever, &c. twelve, &c. by whom, &c. and who neither, &c. to take Cognizance, &c. because as well, &c. The same Day is given to the Parties aforesaid, &c.

Plea in Abatement to Trespass, that one of the Defendants is Tenant in Common with the Plaintiff. B.R. Salk. 4, 708.

And the said *Margaret* and *Mary* in their proper Persons come and defend the Force and Injury, &c. and pray Judgment of the said Bill of the said *Rebecca*, and that the said Bill may be quashed, because they say that the Close and Yard, and also the Places in which the said *Trespass* is supposed to be done, are, and at the said Time in which, &c. were one Acre of Land; and * that the said *Rebecca*, at the said Time in which, &c. had nothing in the same Acre of Land, unless together in common, and as undivided with the said *Mary Bonner*, † who

* In *Trespass*, the Defendant cannot plead in Abatement, that he himself is Tenant in common with the Plaintiff, because he may give it in Evidence; but on the other Side he may plead, that another is Tenant in common with the Plaintiff, for that will not prove him not guilty. *Salk. 4.*

† Where-ever jointenancy is pleaded in abatement, the life of the other jointenant not named is averred in the plea, otherwise the plea is ill. *Salk. 32. 1 Saund. 29.*

is alive at the Parish of *Stepney* in the County of *Middlesex*; And this they are ready to verify: Wherefore they pray judgment of the said Bill, and that the said Bill may be quashed, &c.

And the said *Rebecca* says, that the said Bill of her the said *Rebecca* ought not to be quashed for the Reason before alledged, because she says, that at the several Times the said several Trespasses are supposed to be done, she was sole seised of the said Close and Yard in the said Declaration of the said *Rebecca* first mentioned, and also of the said Close and Yard in the said Declaration of the said *Rebecca* secondly mentioned, and of the said Well in the said Declaration also mentioned, and also of the third Yard in the said Declaration of the said *Rebecca* thirdly mentioned; and that the said *Margaret* and *Mary* at the said several Times in which, &c. did the several Trespasses aforesaid, as the said *Rebecca* by her said Declaration above complains against them: † *Without this,* *Replication, sole seised.* *Traverse.* that the said *M. B.* at the respective times aforesaid, or at any of them, had any thing in the said premisses, or any of them:
And

† Whether the plaintiff should not to have concluded his *absque hoc* with an averment? And the court seemed to think, that where an *absque hoc* comprizes the whole matter generally, as *absque tali causa*, it may conclude, & *de hoc ponit se super patriam*; but where it only traverses a particular matter, as *absque tali warranto*, &c.

And she prays that this may be inquired of by the country.

Demurrer.

Causes of Demurrer.

And the said *M. D.* otherwise *D.* and *M. B.* say [*prout morat'* *Stroud v. Gerard, usque*] may be quashed. And for causes of demurrer in this case, according to the form of the statute in such case lately made and provided, the said *M.* and *M.* shew to the Court here these causes following, for that the said plea of the said *R.* is double, incertain, and wants Form, and concludes to the country.

Joinder.

And the said *Rebecca* says [*prout antea usque*] prays judgment, and that the said *M.* and *M.* may answer further to the said bill of the said *R.* &c. But because [*ut antea.*]

Continuance.

Respondeas Ouster awarded.

Plea in abatement, that defendant is a prothonotary's clerk, and suitable by bill only, and not by writ.

And the said *T.* in his proper person comes and says that he is, and long before the day of suing out the original writ of the said *W.* and at the same time was, and ever since has been one of the clerks of *G. C. Esq;* one of the prothonotaries of the court of our lord the king of the bench at *Westminster* in the county of *Middlesex*, daily attending in his office in the same court; and that he has transacted, and does transact in his said office, divers affairs of the said prothonotary, and

it ought to be averred. But the chief justice thought not this such a particular matter as need be averred, for 'tis to maintain his writ. *Salk. 4. Vide Dyer 333, 353. 1 Brownl. 1 Lev. 26. 2 Keb. 380.*

of

of several subjects of our said lord the king, and has drawn and written, and does draw and write divers pleas in the same office, and carries on other affairs of the said prothonotary. And the said *T.* further says, that by laudable and ancient custom, and according to the custom and law of the land, and the liberties and privileges of the same court, for time past used and approved hitherto, it has obtained, that all clerks of the prothonotaries of the court of our lord the king of the bench, exercising any affairs in any office of the same prothonotaries in the same court, ought not, and have not for the whole time aforesaid been used according to the liberties and privileges of the same court of the bench aforesaid, for the whole time aforesaid used and approved, to be drawn or compelled other than in the same court of the bench, to answer before any secular judges, except before the justices of our lord the king of the same bench, by bill to be filed against such clerk in the office of such prothonotary, in which such clerk is, upon any pleas or complaints (pleas of freehold, felonies and appeals only excepted); And this the said *T.* is ready to verify: Wherefore he prays judgment, if he the said *T.* ought to be compelled to answer to the said declaration, not being a bill filed against him the said *T.* in the office of the said prothonotary, &c.

*Account.**Hil. 18 Geo. 2.*

Declaration in London, *J. E.* complains of *W. W.* be-
account, as to wit, *J.* ing in the custody of the
bailiff of goods marshal of the *Marshalsea* of our lord the
and chattels. king, before the king himself, in a plea
 B. R. that he render to the said *J.* a reasonable
 account of the time in which he was the
 bailiff of the said *J.* at *London* aforesaid,
 for that whereas he the said *W.* on the
 14th day of *August* in the year of our
 Lord 1734. and from thence until the
 1st day of *June* in the year of our Lord
 1740. at *London* aforesaid, in the parish
 of *St. Mary le Bow* in the ward of *Cheap*,
 was the bailiff of the said *J.* and for and
 during that time had the care and ma-
 nagement of divers goods and chattels,
 to wit, of three gold watches and two
 silver watches of the said *J.* there to
 merchandize and make profit thereof for
 the said *J.* and to render to the said *J.*
 a reasonable account thereof, when he
 should be afterwards thereto requested;
Yet the said *W.* altho' often requested,
 hath not yet rendered the aforesaid rea-
 sonable account of the said goods and
 chattels to the said *J.* but to render the
 same to him hath hitherto wholly refused,
 and still refuses, to the said *J.* his damage
 of 100 l. And therefore he brings his
 Suit, &c. Pledges, &c.

And

And the said *W.* by *R. R.* his attorney *Plea Ne un-*
comes and defends the wrong and injury *ques ballivus.*
when, &c. and says, that he never was
bailiff of the said *J.* nor had the care and
management of the said goods and chat-
tels, nor of any parcel of them, to render
account thereof to the said *J.* when he
should be thereto requested in manner and
form as the said *J.* above complains a-
gainst him: And of this he puts himself
upon the country.

London, to wit, *J. B.* and *J. A.* now *Declaration in*
wardens of the parochial church of the *account by the*
parish of *St. Bartholomew the less* near *present church-*
the *Royal Exchange, London*, complain of *wardens a-*
J. E. and *S. F.* late wardens of the same *gainst the late*
parochial church, being in the custody *church-war-*
of the marshal of the *Marshalsea* of our *dens. B. R.*
sovereign lady the queen, before the *Cases L. E. 22.*
queen herself, of a plea, that they render *Rep. Q. A.*
to the said *J.* and *J. A.* now wardens of *186, 263.*
the said parochial church, a reasonable
account for the time in which they the
said *J. E.* and *S. F.* were wardens of the
parochial church of the said parish, and
receivers of the monies, goods and chat-
tels of the parishioners of the said paro-
chial church of the parish of *St. Bartho-*
lomew the less near the *Royal Exchange,*
For that, to wit, that the said *J. E.* and
S. F. being wardens of the said church at
London aforesaid, in the parish aforesaid,
in the ward of *Broadstreet*, from the feast
of *Easter* in the year of our Lord 1706.
until at and upon the feast of *Easter* in

the year of our Lord 1708. within that time, by virtue of their said office, had the care and administration of the goods and chattels of the parishioners of the said parochial church, and received divers sums of money hereafter mentioned to the use of the parishioners of the said church, paid to the said *J. E.* and *S. F.* by divers persons hereafter mentioned, to render account thereof; to wit, by the hands of *W. W.* 21 *l.* 6 *s.* 6 *d.* by the hands of *J. T.* 68 *s.* 6 *d.* by the hands of *M. E.* 6 *l.* 10 *s.* by the hands of *J. A.* 7 *l.* 16 *s.* 8 *d.* * by the hands of the parishioners of the said parish 1000 *l.* by the hands of *Mr. G.* 30 *l.* by the hands of *Mr. P.* 14 *s.* 2 *d.* [and so of many others, and then the declaration proceeds as follows] to render a reasonable account thereof to the said parishioners of the said parochial church, when they should be thereunto required; And afterwards, to wit, on the 5th day of *April* in the year of our Lord 1708. the said *J. E.* and *S. F.* from the office of wardens aforesaid, at *London* aforesaid, in the parish and ward aforesaid, were removed, and the

* The defendants pleaded, that the plaintiffs were never elected church-wardens: Issue, and verdict for the plaintiffs. Judgment, that as to 1000 *l.* said to be received by the hands of the parishioners, the count should abate, and that the defendants *cant inde sine die*; and that as to the rest, the defendants should account. *Q. quid inde ulterius?*

said *J. B.* and *J. A.* the present plaintiffs, afterwards, to wit, on the said 5th day of *April* in the year of our Lord last above-said, at *London* aforesaid, in the parish and ward aforesaid, were in due manner elected and constituted into the office of wardens aforesaid by the parishioners of the said church, and now are wardens of the said church: *Nevertheless* the said *J. E.* and *S. F.* although often requested, have not yet rendered their account of the money and goods aforesaid to the said *J.* and *J. A.* now wardens of the said church, but have altogether refused, and still do refuse to render the same to them, to the damage of the parishioners of the said parochial church 2000*l.* And thereupon they bring Suit, &c.

Pledges, &c.

Bar.

Hil. 17 Geo. 2.

AND the said *E.* by *W. D.* her Attor- *Plea by an*
ney comes and defends the wrong and *executrix.*
injury when, &c. and saith, that the said *C. B.*
J. P. ought not to have or maintain his
action aforesaid against her, *because* she *Plene admini-*
saith that she hath fully administred all *stravit gene-*
the goods and chattels which were the *rally.*
said *S. W.'s* at the time of his death in her
hands to be administred, and that she hath
not any goods or chattels which were the

And a judgment recover'd against her in an action of covenant.

The indenture.

said *S. W.*'s at the time of his death in her hands to be administred, nor had she any at the time of issuing the original writ of the said *T.* nor at any time since; And this the said *E.* is ready to verify: Wherefore she prays judgment, if the said *J. P.* ought to have or maintain his said action against her. And the said *E.* for a further plea in this behalf, by leave of the court here for this purpose first had and obtained by force of the statute in such cases made and provided, further says, that the said *J. P.* ought not to have or maintain his said action against her, because she saith, that by a certain Indenture made at *B.* aforesaid, in the life-time of the said *S.* to wit, upon the 19th day of *November* in the year of our Lord 1718. between the said *S.* by the Name of *S. W.* of *W.* in the county of *N.* gent. of the first part, the said *E.* by the name of *E. O.* of *Meers Ashby* in the said county of *N.* widow, of the second part, and *R. H.* (who is since dead) and *T. G.* of the third part, reciting, that whereas a marriage was then shortly to be had and solemnized between the said *S.* and the said *E.* and that the said *E.* being then possessed of several goods, chattels and monies of a considerable value, and being desirous of securing the sum of 300 *l.* of good and lawful money of *Great Britain*, to be disposed of according to her last will and testament, writing or otherwise, it was

was by the said indenture declared and agreed by and between all the said parties to the said indenture, that the said sum of 300 *l.* should, after the said intended marriage should take effect, be raised in a convenient time out of the goods and chattels of the said *S.* or the said *E.* and should be ordered and disposed of, and be employed to such person or persons, and to and for such use and uses, intents and purposes, as was thereafter mentioned and declared; (that is to say) that the said sum of 300 *l.* as soon as raised, should be put out at interest, by the approbation of the said *S.* and the said *E.* during the joint lives of the said *S.* and *E.* and that whensoever the said monies or any part thereof should be paid in, the said monies so paid should be put out again at interest upon such securities as the said *S.* and the said *E.* should approve of, and that the securities to be taken for the same should be made and taken in the names of the said *R.* and *T. G.* in trust for the said *E.* And it was thereby further declared and agreed by and between the said parties to the said indenture, and the said *E.* did thereby declare and agree, that it should and might be lawful to and for the said *S.* to have and receive the interest of the said sum of 300 *l.* for the better livelihood and maintenance of the said *S.* and *E.* and their family; And the said *S.* did by the said indenture for himself, his heirs, executors and administrators, covenant,

nant, grant and agree to and with the said *R.* and *T. G.* their executors and administrators, and to and with every of them, that the said sum of 300 *l.* and every part thereof, should and might from time to time, and at all times after the death of the said *E.* be paid unto, had, taken and received by such person or persons to whom the said *E.* should at any time or times during her life-time limit, give, devise, order, appoint or dispose of the same, or any part or parts thereof, either by her last will and testament in writing, or by any other writing purporting to be her last will and testament, or otherwise; And it was by the said indenture further agreed and declared, that if it should happen that the said *E.* should survive the said *S.* her intended husband, that then and in such case, from and immediately after the death of the said *S.* the said sum of 300 *l.* and every part thereof, should be accounted the proper monies and estate of the said *E.* and should and might be received and taken by her the said *E.* her executors and administrators, and should and might be employed and disposed of to such person and persons, and to and for such use and uses, intents and purposes, and in such manner and form as she the said *E.* should at any time or times then following during her life think good to limit, appoint, order, give, devise or dispose of the same, or any part or parts thereof,

as by the said indenture more fully appears. And the said *E.* further says, that *Breach.* afterwards, to wit, on the 1st day of December in the year last above mentioned, at *B.* aforesaid, the said marriage was had and solemnized between the said *S.* and the said *E.* and altho' the said *S.* afterwards, to wit, on the same day and year, at *B.* aforesaid, possessed himself of divers goods, chattels and monies, of a considerable value, to wit, of the value of 300 *l.* which said goods, chattels and monies, at the time of his said intermarriage with the said *E.* were the proper goods, chattels and monies of the said *E.* yet the said *E.* saith, that notwithstanding the said marriage took effect as aforesaid, and the said *S.* had possessed himself of the said several goods, chattels and monies as aforesaid, yet the said sum of 300 *l.* or any part thereof, hath not hitherto been raised out of the goods and chattels of the said *S.* nor of the said *E.* nor otherwise raised and put out according to the form and effect of the said agreement above mentioned and contained in the said indenture in that respect. And there- *Action brought thereupon against defendant,* upon, the same indenture remaining in full force and virtue not released, and the said 300 *l.* or any part thereof, not paid, satisfied or discharged, and the said *T. G.* having survived the said *R.* he the said *T.* in *Hil.* term in the 16th year of the reign of his present majesty, in the court of our said lord the king of the bench here, to wit,

wit, at *W.* in the county of *M.* impleaded the said *E.* by the name of *E. W.* late of *W.* in the said county of *N.* widow and executrix of the last will and testament of *S. W.* gent. her late husband, deceased, otherwise lately called *S. W.* of *W.* in the county of *N.* gent. in a plea, that she keep with the said *T.* the covenant made between the said *S.* and the said *R. H.* deceased, and the said *T.* according to the force, form and effect of the indenture aforesaid made between them and the said *E.* And thereupon such proceedings were had in the same court, that the said *T.* in the said *Hil.* term in the 16th year aforesaid, before Sir *J. W.* knt. and his companions justices of our said lord the king, of the bench aforesaid, at *W.* aforesaid, by judgment of the said court recovered against the said *E.* as executrix as aforesaid, 300 *l.* which were adjudged to the said *T.* by the said court here for his damages which he had sustained by occasion of the said breach of covenant in that behalf to be levied of the goods and chattels which were the goods and chattels of the said *S.* at the time of his death, in the hands of the said *E.* unadministred, whereof she is convicted, as by the record and proceedings thereof now remaining in the said court of our said lord the king of the bench here, to wit, at *W.* aforesaid, more fully appears; which said judgment still remains in its full force, strength and virtue, not reversed nor vacated, nor any

*And judgment
recovered.*

wife

wife satisfied. *And* the said *E.* further Plene admini-
 saith, that she hath fully administred all stravit præter.
 the goods and chattels which were the said
 S.'s at the time of his death in her hands
 to be administred, except goods and chat-
 tels to the value of 5 l. and that she hath
 not, nor had at the time of suing out of
 the original writ of the said J. nor hath
 ever since had any goods and chattels
 which were the said S.'s at the time of his
 death in her hands to be administred, ex-
 cept the said goods and chattels to the
 value of the said 5 l. which are not suffi-
 cient to satisfy the said debt due on the
 said judgment as aforesaid, and which are
 subject and liable towards satisfaction there-
 of; And this the said *E.* is ready to ve-
 rify: Wherefore she prays judgment, if
 the said J. ought to have or maintain his
 said action against her, &c. *R. Draper.*

And the said *S.* by *G. B.* his attorney *Plea, Non*
 cometh and defendeth the force and injury *assumpsit infra*
 when, &c. and saith, that the said *C.* *sex annos.*
 ought not to have or maintain his afore-
 said action against him, because he saith
 that the said bill of the said *C.* was exhi-
 bited on the 23d of *April* in the 8th year
 of the reign, &c. and not before; and that
 the said *S.* at any time within six years
 next before the day of exhibiting the said
 bill, did not undertake in manner and
 form as the said *C.* above hath declared
 against him; And this he is ready to ve-
 rify: Whereupon he prays judgment, if
 the said *C.* ought to have or maintain
 his

*Plea, Non
assumpsit,
Non assumpsit
infra sex an-
nos, that de-
fendant was
a bankrupt,
and plaintiff's
cause of action
accrued before
defendant be-
came a bank-
rupt. C.B.*

his aforesaid action thereupon against him, &c.

And the said D. by T. B. his attorney comes and defends the force and injury when, &c. and says, that he did not assume upon himself in manner and form as the said G. above complains against him; And of this he puts himself on the country. And the said G. likewise, &c. And the said D. by leave of this court, according to the form of the statute in that case lately made and provided, further says, that the said G. ought not to have his said action against him the said D. because he says that he the said D. did not assume upon himself in manner and form as the said G. above complains against him, at any time within six years next before the day of obtaining the said original writ of the said G. And this he is ready to verify: Wherefore he prays judgment, if the said G. ought to have his said action against him the said D. And the said D. by leave of this court, according to the form of the said statute in that case lately made and provided, further says, that the said G. ought not to have his said action against the said D. because he says, that he the said D. since the 26th day of May in the year of our Lord 1716. mentioned in a certain act made in the parliament of his late majesty king George I. held by prorogation on the 11th day of November in the year of our Lord 1718. intituled, *An act for the better preventing frauds com-*

mitted

mitted by bankrupts, and during the continuance of the said act, to wit, on the — day of — in the year of our Lord — at W. aforesaid, became a bankrupt, within the intention and meaning of the several statutes made and in force against bankrupts: And the said D. further says, that the cause of the aforesaid action in the declaration aforesaid above specified, did accrue to the said G. before the time in which he the said D. did as aforesaid become bankrupt: And of this doth put himself upon the country: And the said G. likewise, &c.

J. Baynes.

And the said N. and J. by J. H. their attorney come and defend the force and injury when, &c. and say, that they did not undertake in manner and form as the said J.

Plea, Non assumpsit by two defendants. C. B.

above complains against them; And of this they put themselves upon the country: *And Issue.*

the said J. likewise, &c. And the said M. by H. H. his attorney comes and defends the force and injury when, &c. and says nothing in bar or preclusion of the

Judgment by Nil dicit against a third defendant.

aforesaid action of the aforesaid J. whereby the said J. remains undefended by the said M. by reason whereof the said J. ought to recover against the said M. his damages occasioned by the non-performance of his said promises and undertakings. But because it is not known whether or no the said N. and I. will be convicted of the premisses, and if they shall be convicted, it is convenient and necessary that there should be only one taxation

Unica taxatio;

Venire tam
ad triand'
quam ad in-
quir'.

*Plea in case
Sar assump.
recovery in a
former action.*

taxation of damages for the whole pre-
misses in one writ specified, and those
damages ought to be settled by the jury
of the country in that behalf, let the
writ of inquiry of damages aforesaid a-
gainst the said *M.* be stayed until the said
issue between the said *J.* and the said *N.*
and *J.* shall be determined; *Therefore,*
as well to try the issue between the said
J. and the said *N.* and *J.* above joined,
as also to inquire what damages the said
J. hath sustained by occasion of the pre-
misses aforesaid, the sheriff is commanded
that he cause to come here
twelve free and lawful men of the body
of his county, &c. by whom, &c. and
who are not related to the said *N. I.* or
M. or to the said *J.* to recognize, &c.
because as well, &c.

And the aforesaid *J.* by *J. D.* his At-
torney comes and defends the force and
injury when, &c. and says that the said
T. ought not to have or maintain his said
action against him, because he says, that
after the making the said several promises
and assumptions in the said declaration
mentioned, and before the day of praying
the original writ of the said *T.* to wit, in
the term of St. *Michael* in the present
year of the reign of the now king, before
Sir *R. E.* knt. and his companions justices
of our said lord the king of the bench at
W. by bill and without writ of the same
king, and by the consideration of the said
court, the said *T.* recovered against the
said

saïd J. 60 l. for his damages which he had sustained, as well by reason of the not performing the several promises and assumptions in the saïd declaration above mentioned, as for his costs and charges by him in his saïd suit in that behalf laid out and expended, as by the record and process thereof in the saïd court of our saïd lord the king of the bench at W. being and remaining, fully appears; And the saïd J. says, that the promises and assumptions in the saïd record mentioned, and the promises and assumptions in the saïd declaration above-mentioned, are the same promises and assumptions, and not other or different, and made for the same considerations, and not for other or different; And this the saïd J. is ready to justify: Whereupon he prays judgment, if the saïd T. ought to have or maintain his saïd action thereupon against him, &c.

And the aforesaid T. says, that by any *Replication*,
 thing alledged by the saïd J. in the above *Nul tiel rec.*
 pleading, he ought not to be precluded from having his action aforesaid against the saïd J. because he says that there is not any such record of the saïd recovery against the saïd J. at the suit of the saïd T. as he the saïd J. above in pleading hath alledged; And this he is ready to justify: Whereupon he prays judgment, and that his saïd damages may be adjudged to him, &c.

*Rejoinder,
Quod habetur
tale recordum.*

*Day to bring in
the record.*

*Defendant de-
fecit de re-
cordo.*

*Plea in case
Sur assump.
recovery in
another action.*

And the aforesaid J. says, that there is such record of the said judgment, as the said J. above in pleading hath alledged: And this he is ready to verify by the said record, and prays that the said record may be seen and inspected by the justices here. And because the said record is not now to be had here in court, It is commanded the said J. that he have here the said record on — at his own peril, &c. The same day is given as well to the said T. as to the said J. here, &c. At which day come here as well the said T. as the said J. by their said attornies; and the said J. hath not here the said record, but maketh default; whereby it sufficiently appears to the justices here, that there is not any such record of the said recovery as the said J. hath alledged: Wherefore, &c.

And the said M. by J. B. his attorney cometh and defendeth the force and injury when, &c. and saith, that the said R. C. his action thereof against the said M. ought not to have, because he saith, that he the said R. heretofore, that is to say, in Mich. term in the 8th year of the reign of our now lord the king impleaded the said M. in his said majesty's court of Exchequer before the barons of the said Exchequer (the said court of Exchequer being at that time, and still is, at W. in the county of M.) in a certain plea of trespass upon the case upon promise, for

not

not performing these same promises and undertakings mentioned in the said declaration, and such proceedings were had thereupon in the said court of Exchequer, that the said R. C. afterwards, to wit, in the same *Mich.* term in the year aforesaid, by the consideration of the said court of Exchequer, recovered against the said M. 93 *l.* which to the said R. C. in the said court of Exchequer were adjudged for his damages which he sustained, as well on occasion of not performing the same promises and undertakings as are mentioned in the above declaration, as for his costs and charges by him about his suit in that behalf laid out, whereof the said M. is convicted, as by the record and proceedings thereof (which our now lord the king, by virtue of his majesty's writ of error by the said M. prosecuted of and upon the premisses, hath lately caused to be brought in his said majesty's court of Exchequer chamber at *W.* there to be determined, and which still in the said court of Exchequer remains undetermined) more at large appeareth, which said judgment still remaineth in its full strength and effect, not in the least reversed, satisfied or annihilated; And this he is ready to verify by that record: Whereof he prayeth judgment, if the said R. C. his said action therefore against him ought to have, &c.

In ejectment, upon the demise of *J. B.* the defendants pleaded Not guilty; and this plea was prepared at the assizes,

*Plea, Puis
darrein cont.
in ejectment
a release from
the lessor of
the plaintiff.*

but the plaintiff did not proceed, and the plea was not offered.

And the said *T. B.* and *J. H.* in their proper persons come and say, that the justices of our sovereign lady the queen here ought not to proceed to take the jury aforesaid between the said defendants and the said plaintiff, because they say, after the last continuance of the said plea, to wit, after from which the said plaint was last continued here, until this day, to wit, on the 18th day of *July* last past, and before the same 18th day of *July*, to wit, on the 17th day of *July* last past, the said *J. B.* by the name of *J. B.* of *E. W.* in the parish of *E.* in the county of *York*, by his writing sealed with the seal of the said *J.* bearing date the same 17th day of *July* at — aforesaid, remised and released to the said *T.* and *J.* and their heirs, all his estate, right and title of and in the said messuages, lands and tenements in the said declaration mentioned, and also all and all manner of actions and causes of action whatsoever of and concerning the said premisses, or any part thereof; And this they are ready to verify, &c. Wherefore they pray that the said justices will not proceed further to take the said jury, with this, that the said *T.* and *J.* will verify that the said *J. J.* is made and named plaintiff in the same action only to try the title of the said *J. B.* to the said tenements.

And

And the said *T.* by *F. K.* his attorney *Plea, outlawry*
 comes and defends the force and injury *in the plaintiff.*
 when, &c. and saith, that the said *J.*
 ought not to have his aforesaid action
 against him the said *T.* thereon, because
 he saith that one *C. T.* heretofore (that is
 to say) in *Easter* term in the 5th year of
 the reign of his present majesty, by an ori-
 ginal writ impleaded the said *J.* by the
 name of *J. H.* late of *London*, gent. in the
 court of the said now king, before the king
 himself (the said court then and still being
 at *W.* in the county of *M.*) in a plea of
 trespass; and the said *T.* because he did
 not appear in his said majesty's court be-
 fore the king himself, to answer unto the
 said *C.* in the aforesaid plea, according to
 the law and customs of this realm, was
 put in exigent to be outlawed in *London*,
 and for that reason afterwards, to wit,
 on *Monday* next before the feast of the
 purification of the blessed virgin *Mary*, in
 the 6th year of the reign of his present
 majesty, in the said court of our said lord
 the now king, before the king himself,
 was outlawed in due form of law at the
 suit of the said *C.* in the aforesaid plea,
 and still remains outlawed, as by the re-
 cord and proceedings thereof in his said
 majesty's court, before the king himself
 at *W.* aforesaid, returned and now there
 remaining, may more fully appear; And
 this he is ready to verify by the said re-
 cord: Wherefore he prays judgment,
 D 3 whether

whether the said *J.* ought to have his said action therefore against him, &c.

Replication,
Nul tiel rec'.

And the said *J.* saith, that he by any thing by the said *T.* in his plea above alledged, ought not to be barred from his said action against him, because he saith that there is not any such record of outlawry in his said majesty's court, before the king himself, as the said *T.* by his said plea hath alledged; And this he is ready to verify in such manner as the court shall award. And the said *T.* is commanded that he have the record here on the morrow of the ascension of our Lord at his peril; And the same day is given to the said *J.* here, &c. At which day here come as well the said *J.* as the said *T.* by their attornies aforesaid; and the said *T.* hath not here the said record, but maketh default thereof: Wherefore the said *J.* ought to recover, &c.

Day to bring
in the record.

Defendant de-
fecit de re-
cordo.

Plea, the sta-
tute of frauds;
no memoran-
dum in writ-
ing.

And the said *G.* by *R. B.* his attorney comes and defends the force and injury when, &c. and says that the said *J.* ought not to have his said action against him, because he says that there is not, nor ever was any memorandum or note in writing of the said promise and undertaking above supposed to be made and signed by the said *G.* or any other person thereunto by him lawfully authorized, according to the form of the statute for preventing frauds and perjuries in such case lately made and provided; And this he is ready to verify:

Where-

Wherefore he prays judgment, if the said *J.* ought to have his said action against him, &c.

And the said *W. T.* by *W. S.* his attorney *Plea setting off a debt.*
comes and defends the force and injury when, &c. and saith, that the said *J.* and *S.* ought not have their said action against him, because he says that the said *J.* and *S.* at the time of suing out the original of the said *J.* and *S.* were and now are indebted to the said *W. T.* in the sum of 50 *l.* for meat, drink, washing, lodging, apparel, and other necessities found and provided by the said *W. T.* for the said *S.* while she was sole, at her special instance and request; and also in the further sum of 50 *l.* for divers goods, wares and merchandizes sold and delivered by the said *W. T.* to the said *S.* while she was sole, at her like instance and request; and also in the further sum of 50 *l.* as well for money by the said *W. T.* to the said *S.* while she was sole, at her request lent and advanced, as for money to the uses of the said *S.* while she was sole, at her like request expended, paid and laid out, and for money by the said *S.* while she was sole of the said *W. T.* had and received; and also in the further sum of 50 *l.* as well for divers work, labour, care and diligence of the said *W. T.* by himself, his servants and horses, for and at the like request of the said *S.* while she was sole in and about her lawful business done and performed, as for depasturing, feeding

ing and grazing certain cattle of the said S. while she was sole, at her like request, depastured, fed and grazed by the said W. T. which said several sums of 50, 50, 50 and 50 l. amount in the whole to the sum of 200 l. and are still due and unpaid to the said W. T. And the said W. T. further saith, that he has been, and still is ready, and doth now offer (according to the form of the statute in this behalf made and provided) to set off against the money which in and by this suit shall appear to be due to the said J. and S. so much of the said 200 l. so as aforesaid due to him the said W. T. as shall satisfy such money as appears to be due to the said J. and S. as aforesaid; And this he is ready to verify: Wherefore he prays judgment, if the said J. and S. ought to have their said action against him.

W. Hawkins.

Non assump.
Seacc.

And the said H. by R. M. his attorney comes and defends the force and injury when, &c. and saith, that he did not take upon himself in manner and form as the said R. hath above declared against him: And of this he puts himself on the country; And the said R. doth the same.

Notice to set
off a debt.

Take notice, that the defendant intends at the trial of this cause to set off a debt of 126 l. due from the plaintiff to the said defendant for work and labour done, and for goods sold and delivered, and for money laid out, and the said sum, or so much thereof as may be sufficient to answer the plaintiff's demands in this cause,

may

may be set off against the plaintiff's said demands, pursuant to the act of parliament in that case made and provided.

To Mr. W. L. clerk E. S. cl^r in court for
in court for the defendant. Dated
plaintiff. 10 May 1734.

And the said J. in his proper person *Plea, setting*
comes and defends the force and injury *several sums*
when, &c. and says that the said J. ought *against plain-*
not to have or maintain his said action *tiff's demands.*
against him, *because* he says that the said
J. on the day of exhibiting his said bill
against the said J. to wit, the 30th day
of May in the year aforesaid, at W. afore-
said in the county aforesaid, was and yet
indebted unto the said J. in the sum of
105 l. of lawful money of G. B. in the
manner herein after mentioned; that is
to say, the said J. on the 29th day of
May in the year of our Lord 1734 at W,
in the county aforesaid, made a certain
promissory note in writing, and subscribed
his name thereto, which said note bears
date the same day and year, whereby the
said J. promised to pay to the said J. or
order 144 l. ten days after date thereof,
or value received by the said J. of the
said J. And the said J. avers that he made
no order for the payment of the said note
on the said J. but acknowledges the said
J. hath paid him the sum of 110 l. part
of the said note, and the remaining 34 l.
other part, so due and payable from the
said J. by the said note to the said J.
still

still remains justly due and payable to him; *And also* the said *J.* afterwards, to wit, the 24th day of *July* in the year last mentioned, at *W.* aforesaid in the county aforesaid, made another promissory note in writing, and subscribed his name thereto, which said last mentioned note bears date the same day, by which said last mentioned note the said *J.* six weeks after date thereof promised to pay to the said *J.* or order 40 *l.* for value received by the said *J.* of the said *J.* and the said *J.* avers that the said sum of money mentioned in the said last mentioned note, or any part thereof, hath not been paid to him, and that he the said *J.* hath not made any order for the payment thereof to any other person or persons whatsoever, but the same note still remains in his hands unpaid and unsatisfied; *And also* the said *J.* on the said 30th day of *May* in the year of our Lord 1735. at *W.* aforesaid, in the county aforesaid, was and yet is indebted to the said *J.* in the sum of 31 *l.* of lawful money of *G. B.* as well for money before that time expended, laid out and paid, in the soliciting, prosecuting, carrying on and defending of several suits at law and in equity in his present majesty's courts of Exchequer chamber, King's bench and Common bench at *W.* as for the said *J.*'s fees, care and diligence, in soliciting, prosecuting, carrying on and defending the same for the said *J.* by the said *J.* and at the special instance
and

and request of the said J. as also for money lent and paid to the said J. by the said J. at the like special instance and request of the said J. Which said several sums of 34 l. 40 l. and 31 l. so due and owing to the said J. from the said J. as aforesaid, amount in the whole to the sum of 105 l. And the said J. is ready, and now offers to set against the demands of the said J. so much thereof as is sufficient to satisfy his said demands in this action, according to the form of the statutes in that case lately made and provided; And this he is ready to verify: Wherefore he prays judgment, and that the said J. may be barred from having his said action against him, &c.

J. Agar.

And the aforesaid S. by M. H. his attorney comes and defends the force and injury when, &c. And prays the hearing of the writing obligatory aforesaid; and it is read to him: He prays also the hearing of the condition of the same writing obligatory; and it is read to him in these words, to wit, The condition, &c. Which being heard and read, the aforesaid S. says, that he by virtue of the writing obligatory aforesaid ought not to be charged with the debt aforesaid, because he says, that after the 29th day of September in the year of our Lord 1714. to wit, on the aforesaid 17th day of August in the year of our Lord 1734 aforesaid, at W. aforesaid, it was corruptly agreed between the aforesaid J. and the said S. that

*Plea in debt
on a bond.*

Oyer.

that the said *J.* should lend to the said *S.* the sum of 20 *l.* and should forbear and give a day of payment thereof until the 12th day of *November* next ensuing; and that the said *S.* for the loan of the said 20 *l.* and for the forbearance and giving a day of payment thereof for the time aforesaid, should give and pay to the said *J.* the sum of 20 *s.* a month; and that the said *S.* should become bound to the said *J.* in a certain writing obligatory, as a security to the said *J.* for the payment of the said sum of 20 *l.* according to the form and effect of the corrupt agreement aforesaid; and afterwards, to wit, on the aforesaid 17th day of *August* in the year of our Lord 1734. aforesaid, at *W.* aforesaid, the aforesaid *J.* in prosecution of the corrupt agreement aforesaid, did lend to the aforesaid *S.* the aforesaid sum of 20 *l.* and the aforesaid writing obligatory, in the declaration aforesaid above mentioned, was thereupon then and there by the said *S.* sealed and delivered to the said *J.* as the deed of the said *S.* as a security for the payment of the said sum of 20 *l.* so lent according to the form and effect of the corrupt agreement aforesaid, and the said *S.* in performance and according to the form and effect of the aforesaid corrupt agreement, afterwards, to wit, on the 15th day of *November* in the year of our Lord 1734. aforesaid, at *W.* aforesaid, paid to the said *J.* the sum of 20 *s.* a month for the loan and forbearance of the
the

the aforesaid 20 *l.* until the aforesaid 12th day of *November*; and the said *J.* then and there took and accepted of the said 20 *l.* the said sum of 20 *s.* a month for the loan and forbearance of the aforesaid 20 *l.* until the said 12th-day of *November*, which said 20 *s.* a month for the loan and forbearance of the said 20 *l.* for the said time exceeds the rate of 5 *l.* for the forbearance of 100 *l.* for a year, contrary to the form of the statute in such case made and provided, whereby the writing obligatory in the declaration aforesaid above mentioned, by force and virtue of the above statute in such case made and provided, is void in law; And this he is ready to verify: Whereupon he prays judgment, of the said *S.* by virtue of the writing obligatory aforesaid, ought to be charged with the debt aforesaid, &c.

And the said *J.* saith, that he by any thing before alledged ought not to be barred from having his said action against the said *S.* because he says that it was not corruptly agreed between the aforesaid *J.* and the said *S.* in manner and form as the said *S.* hath above in pleading alledged: And this he prays may be inquired of by the country, &c. And the said *S.* doth the like. *Therefore, &c.*

Replication:

And the said *A. D.* by *P. L.* her attorney comes and defends the force and injury when, &c. and saith that she ought not to be charged with the said debt by virtue of the writing aforesaid, because she saith, that

Plea in debt on a bond, that the obligor was non compos mentis.

that the said *E. D.* at the time of the sealing and delivering the said writing mentioned in the said declaration, was not of sound mind, but was *non compos mentis*; And this she is ready to verify: Wherefore she prays judgment, if she ought to be charged with the said debt by virtue of the writing aforesaid, &c.

Replication.

And the said *F. N.* saith that he, by any thing before alledged by the said *A. D.* in pleading, ought not to be precluded from having or maintaining his aforesaid action thereupon against her the said *A. D.* because he says that the said *E. D.* at the time of the sealing and delivering of the said writing mentioned in the said declaration, was of sound mind, and was *compos mentis*, to wit, on the — day of —, in the year of our Lord 1737 aforesaid, in the county aforesaid: And this he prays may be inquired of by the country; And the said *A.* likewise. *Therefore, &c.*

*Plea by an
heir, in debt
on a bond,
no lands de-
scended.*

And the said *W. H.* by *C. S.* his attorney comes and defends the force and injury when, &c. and saith, that he as son and heir of the said *G.* his father, by virtue of the said writing ought not to be charged with the said debt, because he says that he the said *W.* on or before the day of suing out the original writ of the said *T.* had not any lands or tenements by hereditary descent from the said *G.* his father in the fee-simple; And this he is ready to verify: Wherefore he prays judgment, if he as son and heir of the said *G.* his father,

father, by virtue of the said writing ought to be charged with the said debt, &c.

And the said T. H. saith, that he by *Replication.*
any thing in the said plea alledged ought not to be barred from having his said action against the said W. because he says that the said W. on or before the day of suing out the said original writ of the said T. had several lands and tenements by hereditary descent from the said G. his father in fee-simple, to wit, in the county of *Lincoln* aforesaid; And this he prays may be inquired of by the country: And the said W. likewise.

And the said E. by G. N. his attorney *Plea, in debt on a bond, defendant is not devisee.*
comes and defends the force and injury when, &c. and says that the said T. ought not to have his aforesaid action against him, because he says that he the said E. is not devisee of the said G. of any lands or tenements of the said G. whereof the said G. at the time of his decease was seised in fee-simple in possession, reversion or remainder, or had power to dispose of the same by his last will or testament; And this he is ready to verify: Whereupon he prays judgment, if the said T. ought to have his aforesaid action against him, &c.

And the said T. H. as to the aforesaid *Replication.*
plea of the said E. H. by him above pleaded in bar, says that he by any thing therein alledged ought not to be barred from having his said action against the said E. because he says that he the said E. is devisee of
of

of the said G. of several lands and tenements of the said G. whereof the said G. was seised in fee-simple, to wit, in the county of L. aforesaid: And this he prays may be inquired, &c.

Plea, bond delivered as an escrow, upon condition.
Lil. Ent. 186.
1 Inst. 303.
9 Co. 137.
1 Salk. 274.
Braft. Reg. 317, 540.

And the said J. M. by ——— his attorney comes and defends the force and injury when, &c. and says that the said J. R. ought not to have or maintain his said action thereupon against him, because he says that he ought not to be charged with the said debt by virtue of the said writing obligatory, because he says that he the said J. M. on the 27th day of May in the 12th year of the reign of our late sovereign lord William III. late king of England, &c. at London aforesaid, in the parish of St. Mary le Bow in the ward of Cheap, made and sealed the said writing, and then and there delivered it to one E. B. as an escrow, to be safely kept, upon the condition following, to wit, that if the said J. R. upon the 20th day of June in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, should deliver to one S. B. one hundred yards of woollen cloth called kerses, and two hundred yards of linen cloth in good and merchandizable condition, to be exported by the said S. in the ship called the *Fisher*, to Virginia in parts beyond the seas, that then the said J. M. should deliver the said writing obligatory to the said J. R. as the deed of the said J. M. otherwise not. And the said J. M. says,

Condition not performed.

that the said *J. R.* upon the 20th day of *June* in the year aforesaid, did not deliver to the said *S.* the said hundred yards of woollen cloth, or two hundred yards of linen cloth; And so the said *J. M.* says, *Et sic non est factum.* that the said writing obligatory brought here into court, by the said *J. M.* delivered in form aforesaid, the said condition not being performed, is not his deed; And this he is ready to verify: Wherefore he prays judgment, if the said *J. R.* ought to have or maintain his said action thereupon against him, &c.

And the said *J. R.* says that he, by any *Demurrer,* thing by the said *J. M.* above in pleading alledged, ought not to be precluded from having his said action thereupon against the said *J. M.* because he says that the said plea above pleaded by the said *J. M.* in manner and form aforesaid, and the matter therein contained, are not sufficient in law to preclude the said *J. R.* from having his said action thereupon against the said *J. M.* to which said plea he the said *J. R.* has no need, and is not bound by the law of the land in any manner to answer; And this he is ready to verify: Wherefore, for default of a sufficient answer in this behalf, he the said *J. R.* prays judgment, and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him. *And Causes of Demurrer.* for causes of demurring in law in this behalf, the said *J. R.* according to the form of the statute in such case lately made and

provided, shews and demonstrates to the court here, that the said *J. M.* does not conclude his said plea to the country as he ought, and that the said plea is not issuable, and wants form, &c.

St. John Broderick.

Joinder.

And the said *J. M.* says, that the said plea by him the said *J. M.* above pleaded in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to preclude the said *J. R.* from having his said action thereupon against him the said *J. M.* which said plea, and the matter therein contained, he the said *J. M.* is ready to verify and prove as the court, &c.

Continuance.

And because the said *J. R.* does not answer to the said plea, and has not hitherto in any manner denied the same, he the said *J. M.* as before prays judgment, and that the said *J. R.* may be barred from having his said action thereupon against him the said *J. M.* &c. But because the court of our said lady the queen now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lady the queen at *W.* until — next after —, to hear judgment of and upon the same premisses, for that the court of our said lady the queen now here is not yet advised thereof.

Bar in debt for rent, as to part, non debet.
Lil. Ent. 164.
Pr. Reg. 562.

And the said *J.* by *G. L.* his attorney comes and defends the force and injury when, &c. and says that the said *J.* ought not

not to have or maintain his said action thereupon against him, because as to the said 13 *l.* in the said declaration first mentioned, parcel of the said 26 *l.* and also as to 8 *l.* 15 *s.* and 9 *d.* parcel of the said 13 *l.* in the said declaration secondly mentioned, residue of the said 26 *l.* the said *J.* says that he does not owe to the said *J. S.* the said 13 *l.* or the said 8 *l.* 15 *s.* and 9 *d.* or any part thereof; And of this the said *J.* puts himself upon the country:

And the said *J.* does so likewise. *And as Issue.*
 to 4 *l.* 4 *s.* and 3 *d.* residue of the said 13 *l.* *As to the residue, a tender.*
 in the said declaration secondly mentioned (the said 13 *l.* last specified being the said ^{5 Co. 114.}
 residue of the said 26 *l.* and being the ^{2 Salk. 622,}
 said rent for the said demised premisses in ^{624.}
 the said declaration secondly specified) the said *J.* says, that well and true it is, that the said 4 *l.* 4 *s.* and 3 *d.* of the said rent upon the said demise in the said declaration secondly mentioned, at the birth of our Lord Christ in the year of our Lord 1701. aforesaid, were in arrear, and still are in arrear; but the said *J.* further says, that he the said *J.* upon the said feast of the birth of our Lord Christ in the year of our Lord 1701. aforesaid, by the space of half an hour next before and until the setting of the sun of the same feast, was ready at the said other house in the said declaration mentioned, and then and there offered to pay to the said *J.* the said 4 *l.* 4 *s.* and 3 *d.* which he ought to have paid there to the said *J.*

at the said feast, according to the form and effect of the said covenant in that behalf mentioned in the said declaration; and that the said J. or any other lawfully authorized on the behalf of the said J. was not then and there ready to receive of the said J. the said 4 *l.* 4 *s.* and 3 *d.* and that the said J. on the said feast-day, and at all times after the said feast of the birth of our Lord Christ in the said year of our Lord, hitherto was ready, and still is ready to pay to the said J. the said 4 *l.* 4 *s.* and 3 *d.* and he brings the same here into court, ready to pay to the said J. if he the said J. is willing to receive the same; All and singular which things the said J. is ready to verify, &c. Wherefore he prays judgment, if the said J. ought to proceed for damages against the said J.

R. Acherley.

*Plea in debt
on a bond.*

Oyer.

*Bond given
for money won
at play.*

And the said H. by G. H. his attorney cometh and defendeth the force and injury when, &c. and prayeth the hearing of the said writing obligatory; and it is read to him; and he prays also the hearing of the condition of the said writing obligatory; and it is read to him in these words, to wit, The condition, &c. which being read and heard, he the said H. saith, that he by virtue of the said writing obligatory ought not to be charged with the said debt, because he saith, that after the 29th day of *September* in the year of our Lord 1674. and before the making the said writing obligatory, to wit, on the 1st day

day of *July* in the year of our Lord 1733. at *W.* aforesaid, he the said *H.* played with the said *S.* at a certain play with dice, called *bazard*, for divers sums of money, exceeding the sum of 100 *l.* upon tick and credit, and not for ready money; and that he the said *H.* so playing with the said *S.* at the said play then and there at one and the same time and meeting, lost upon credit to and with the said *S.* in the whole, a great sum of money, exceeding the sum of 100 *l.* to wit, the sum of 500 *l.* whereof no part was then paid by the said *H.* And the said *H.* afterwards thereupon, to wit, on the said 1st day of *July* in the year of our Lord 1733. aforesaid, at *W.* aforesaid, made and delivered the aforesaid writing obligatory with the aforesaid condition thereto subscribed, for the securing the payment of the said 500 *l.* by him the said *H.* so lost, and by the said *S.* so as aforesaid at the said play won of the said *H.* at one and the same time and meeting, upon credit, whereby, by force of the statute in such case made and provided, the said writing obligatory wholly became and is void and of no effect in law; And this he is ready to verify: Wherefore he prays judgment, whether he ought to be charged with the said debt by virtue of the said writing obligatory, &c.

And the said *S.* saith, that by reason *Replication.*
of any thing above by the said *H.* in pleading alledged, he ought not to be barred

from having his said action against him, because he saith that the said bond was not given for securing the payment of money won at the said play by the said S. of the said H. as the said H. hath above pleaded : And this he prays may be inquired of by the country ; And the said H. likewise. *Therefore, &c.*

*Plea in debt
on an arbitra-
tion bond.
Oyer.*

*No award
made.*

And the said J. by R. S. her attorney comes and defends the force and injury when, &c. and prays oyer of the said bond ; and it is read to her, &c. she also prays oyer of the condition of the said bond ; and it is read to her in these words, to wit, The condition, &c. which being read and heard, the said J. says that the said J. A. ought not to have his said action against her, because she says that the said arbitrators in the said condition of the said bond named, did not make any award of or upon the premisses in writing indented under their hands and seals, ready to be delivered to the said parties on or before the 29th day of *October* next ensuing the date of the said bond ; neither did the said arbitrators chuse any umpire for the ending and composing the differences aforesaid within the time in the condition of the said bond limited in that respect ; And this she is ready to verify : Wherefore she prays judgment, if the said J. ought to have his said action against her, &c.

M. Wright.

*Replication,
award set
forth.*

And the said J. saith, that he ought not, by reason of any thing above alledged
by

by the said *J.* to be barred from having his said action against her, because he says, that on the 29th day of *October* in the condition above-mentioned, the said *J.W.* and *T.S.* the arbitrators named in the said condition, having taken upon them the burthen of the said award, and having fully examined and duly considered the proofs and allegations of both the said parties, for the settling amity and friendship between them, at the city of *Bath* aforesaid, in the county aforesaid, made and published their award and order of and concerning the premisses specified in the aforesaid condition, in writing indented under their hands and seals, in manner and form following, (that is to say) That all actions, suits, quarrels, controversies and demands whatsoever had, moved, arisen, and depending between the said parties, for any manner of cause whatsoever, to the day of the date of the said award, should cease, and be no further prosecuted, and that each of the said parties should pay and bear his and her own costs and charges in any wise relating to or concerning the said premisses; And the said arbitrators in and by their said award did further award, order, and finally determine, that the same *J.S.* her heirs, executors or administrators, should pay to the said *J.A.* his executors or administrators, the full sum of 29*l.* of good and lawful money of *Great Britain*, without any deduction whatsoever, at one in-

tire payment, on the 30th day of *January* then next ensuing, at eleven o'clock in the forenoon of the same day, in the church-porch of the parish of *W.* in the county of *S.* and lastly the said arbitrators, in and by their said award, did award, order, and finally determine, that on payment of the said sum of 29 *l.* the said *J. A.* and *J. S.* should in due form of law execute each to the other of them general releases, sufficient in the law for the releasing each to the other of them, his and her heirs, executors and administrators, all actions, suits, arrests, cause and causes of action and suit, quarrels, controversies and demands whatsoever, for, touching or concerning any matter, cause or thing whatsoever, from the beginning of the world until the said — day of — in the year of our Lord — afore-said, as by the said award now produced here in court more fully appears; And the said *J. A.* in fact says, that altho' he hath performed and fulfilled every thing specified in the aforesaid award on his part to be performed and fulfilled, nevertheless the said *J.* hath not paid to him the said *J.* the said sum of 29 *l.* on the said 30th day of *January* next after the date of the said award, which she ought to have paid to him on that day, according to the form and effect of the said award; And this he is ready to verify: Wherefore he prays judgment, and his debt, together with his damages by means of the detention of

of the said debt, to be adjudged unto him.

John Belfield.

And the said *J.* says that the replication aforefaid of the said *J.* in manner and form aforefaid above made, and the matter therein contained, are insufficient in law for the said *J.* to have and maintain his said action against her, and that she the said *J.* is not necessitated or obliged by the law to make any answer to the said replication in manner and form aforefaid made; And this she is ready to verify: Wherefore, for want of a sufficient replication in this respect, she the said *J.* prays judgment, and that the said *J.* may be barred from having his said action against her, &c.

And the said *J.* for that he in his replication aforefaid hath alledged sufficient matter in law for him the said *J.* to have and maintain his said action against the said *J.* which matter he the said *J.* is ready to verify, and which matter the said *J.* hath not in any manner denied, nor answered the same, but refuseth to admit the proof thereof, the said *J.* as before prays judgment, and his debt aforefaid, together with his damages by means of detaining the same debt, to be adjudged to him, &c.

And the said *G.* by *W. W.* his attorney cometh and defendeth the force and injury when, &c. *And* as to the coming with force and arms, or whatever else is against the peace of the said lord the king, and

Plea in trespass, for entering a house and carrying away goods, &c.
As to part, and not guilty.

As to the residue, a distress for rent.

and the continuance in the said house for more than three hours, parcel of the said twenty-four hours in the said declaration mentioned, saith that he is not guilty; And of this he puts himself upon the country: And the said *M.* likewise. And as to the residue of the trespasss aforesaid above supposed to be done, the said *G.* saith that the said *M.* ought not to have her action against him, because he saith, that a long time before the time in which the trespasss aforesaid is supposed to be done, one *J. C.* was seised of one messuage with the appurtenances in the parish of *St. M. Westminster* aforesaid, of which the said place in which the trespasss aforesaid is supposed to be done, is, and at the time in which, &c. was parcel, in his demesne as of fee; and being so seised, the said *J. C.* before the said time in which the trespasss aforesaid is supposed to be done, to wit, the — day of — in the 6th year of the reign of his present majesty king *George II.* at the parish aforesaid, demised the messuage aforesaid, with the appurtenances, to the said *G.* To have and to hold the said messuage, with the appurtenances, unto the said *G.* and his assigns, from the feast-day of the nativity of our Lord Christ then next ensuing, for and during the term of one whole year from thence next ensuing, and so from year to year, as long as both parties should please; Yielding and paying therefore yearly and every year, during so long time

time as the said G. should hold and enjoy the said messuage, with the appurtenances, unto the said J. C. his heirs and assigns, the yearly rent of 10 l. at the four most usual feasts in the year, (that is to say) at the feast of the annunciation of the blessed virgin *Mary*, the nativity of St. *John* the baptist, St. *Michael* the archangel, and the nativity of our Lord Christ, by even and equal portions, by virtue of which said demise the said G. afterwards, and before the time in which, &c. to wit, the 28th day of *December* in the 6th year of the reign of our said lord the king, into the said messuage with the appurtenances entered and was possessed thereof; and the said G. being so possessed, did afterwards and before the time in which, &c. to wit, the 29th day of *December* in the year aforesaid, in the parish aforesaid, demise one room called the shop, being parcel of the said messuage and the place in which, &c. To have and to hold the said room from the said feast of the birth of our Lord Christ then last past, for and during the term of one quarter of a year from thence next ensuing, and so from quarter to quarter, as long as both parties should please; Yielding and paying therefore yearly and every year, during so long as the said M. should hold and enjoy the said room, unto the said G. or his assigns, 20 s. at the feasts of the annunciation of the blessed virgin *Mary*, the nativity of St. *John* the baptist, St. *Michael* the archangel,

angel, and the nativity of our Lord Christ, by virtue of which said demise the said *M.* afterwards, and before the time in which, &c. to wit, the said 29th day of *December* in the 6th year aforesaid, into the said room entered and was possessed thereof; and because 20 s. for the rent aforesaid, for one quarter of a year, ending at the feast of the annunciation of the blessed virgin *Mary*, in the 6th year aforesaid, to the said *G.* was then in arrear and yet unpaid, the said *G.* the said time in which, &c. entered into the said room in order to distrain for the said rent so in arrear, and continued therein during the said three hours, being parcel of the said twenty-four hours, he being not able in less time to perfect the said distress, and remove the said goods and chattels aforesaid being in the said room found, for the said 20 s. so being in arrear, took and carried away in the name of a distress to another room in the said house in the possession of the said *G.* in the parish aforesaid, and then and there impounded for the time aforesaid, for the cause aforesaid did distrain, as it was lawful for him to do, which entering, taking and carrying away the goods aforesaid, and continuance in the said house for the three hours aforesaid, in form aforesaid, for the cause aforesaid made, is the residue of the same trespass of which the said *M.* above complains; And this he is ready to prove: Wherefore he prays judgment, if the said *M.*

her

her action aforesaid against him the said G. ought to have, &c. *W. Hawkins.*

And the said J. S. G. and J. by T. C. *Plea in trespass and assault against three.* their attorney come and defend the force and injury when, &c. And the said G. and J. say that they are not guilty of the trespass and assault aforesaid, in manner and form as the said J. in his said declaration hath above complained against them; And of this they put themselves upon the country: And the said J. does the same. And the said J. S. as to the coming with force and arms, or any thing which is against the peace of our present lord the king, and also as to the whole trespass aforesaid, except the said assault on the said J. beating and evilly treating him, says that he is not guilty thereof, as the said J. above hath complained against him; And thereupon he puts himself upon the country: And the said J. does the same. And as to the said assault of the said J. and evilly treating of him, above supposed to be done, the said J. S. saith that the said J. ought not therefore to have his said action against him, because he saith that before the said time when, &c. and at the said time when, &c. and afterwards, he the said J. S. was master of a certain ship called the Orford, and had the conduct, direction and management of the said ship lawfully committed to him, at London aforesaid, in the parish and ward aforesaid; and that the said J. at the said time when, &c. at London

Two plead not guilty.

The third, as to part, pleads not guilty.

As to the residue, that defendant was master of a ship, and plaintiff opposed and obstructed him in the discharge of his duty.

London aforesaid, in the parish and ward aforesaid, opposed the said *J.* and obstructed him in the discharge of his duty as master of the said ship, and so placed himself in the way of the said *J. S.* that the said *J.* could not discharge his duty aforesaid without the said *J.* was removed from the place where he then stood; and the said *J.* then and there so requested the said *J.* to remove himself, and to stand out of his way, so that the said *J.* might discharge his duty aforesaid, which the said *J.* did not do, but continued to obstruct the said *J.* and to stand in his way as aforesaid; whereupon, because the said *J.* would not remove himself and stand out of the way of the said *J.* at his request, but continued to obstruct him in the discharge of his said duty as aforesaid, he the said *J.* gently laid his hands on the said *J.* to cause him to remove and to stand out of his way, for the discharge of the duty of the said *J.* as master of the said ship as aforesaid; which are the same assault upon the said *J.* beating and evil treating of him, whereof the said *J.* hath above against him declared; And this he is ready to verify: Wherefore the said *J. S.* prays judgment, if the said *J.* ought therefore to have his said action against him, &c.

Bar in trespass.

Prescription for a way through the plaintiff's close.

And the said *J.* by *L. M.* his attorney comes and defends the force and injury when, &c. And as to the coming with force and arms, &c. and also the whole

trespas

trespass aforesaid, except the breaking and entering the said close, and treading down and consuming the said grass with his feet in walking, and treading down and consuming other grass with his cattle, he says that he is in nothing guilty thereof, as the said *T.* above complains against him; And of this he puts himself upon the country: And the said *T.* does so likewise. And as to the breaking and entering the said close, and treading down and consuming the grass with his feet in walking, and treading down and consuming other grass with his cattle, the said *J.* says that the said *T.* ought not to have his said action thereupon against him, because he says that the said close of the said *T.* at the said time in which, &c. lay, and still lies in a certain common field in *Usborn M.* aforesaid, called *Kirkfield*, lying contiguous to a certain common way there called a common balk, on the north-part and to a certain close in *Usborn M.* aforesaid called *Flask close*, on the south-part of which said close called *Flask close* one *A. B.* long before the time in which, &c. was seised in his demesne as of fee, and that the said *A. B.* and all those whose estate he had in the said close, from the time to the contrary whereof the memory of man is not, have had, used and enjoyed a certain way for themselves, their servants, farmers and tenants there, with their cattle, carts and carriages whatsoever, at all times of the year, at their pleasure,

pleasure, from the said common way in, by and through the said close in which, &c. to the said close called *Flask close*, and so back again from the same close, in, by and through the said close in which, &c. into the said common way; and the said *A. B.* being so seised thereof, afterwards and before the said time in which, &c. at *Usborn M.* aforesaid died, after whose death the said close called *Flask close* descended to *W. B.* being then and still under the age of 14 years, as son and heir of the said *A. B.* upon which *Frances B.* widow, mother and guardian of the said *W. B.* entered into the said close called *Flask close*, in the right and to the use of the said *W. B.* and afterwards and before the said time in which, &c. to wit, on the ——— day of, &c. at *Usborn M.* aforesaid, the said *F.* demised the said close called *Flask close* to the said *J.* To hold to the said *J.* and his assigns for the term of one year thence next ensuing, and so from year to year, so long as it should please both parties, by virtue of which said demise the said *J.* entered into the said close called *Flask close*, and was and still is possessed thereof; whereby the said *J.* on the 10th day of *May* in the 29th year aforesaid, and at divers days and times afterwards, and before the 1st day of *June* then next ensuing went from the said common way with his cattle, in, by and through the said close of the said *T.* to the said close called *Flask close*, and so

of the mariners of a certain ship called the *Union* frigate, which said ship at the time in which, &c. was upon the high sea (to wit, at the parish aforesaid) in her voyage which she was making to *Leghorn*, and other places in the *Mediterranean* sea, and from thence back to *London*; and that the said *G. A.* at the said time in which, &c. refusing to do his duty in and about the necessary navigating and governing the said ship in her said voyage, and despising the orders of the said *G. L.* in that behalf, and intending to sow and stir up sedition, tumults and mutiny amongst the other mariners of the said ship against the said *G. L.* being his master as aforesaid, the said *G. L.* that he might keep the said *G. A.* to his duty and obedience, moderately struck the said *G. A.* with his hand, as it was lawful for him to do, which is the same residue of the said trespass whereof the said *G. A.* above complains; And this he is ready to verify: Wherefore the said *G. L.* prays judgment, if the said *G. A.* ought to have or maintain his said action thereupon against him, &c.

*Plea, bar in
trespass, as to
part not guilty.*

And the said *B.* by — his attorney comes and defends the force and injury when, &c. and as to the coming with force and arms, or whatsoever that is against the peace of our Lord the present king, as also the whole trespass aforesaid, with the cattle aforesaid, except with one gelding and one mare of the cattle aforesaid, above supposed to be done, the said *B.*

B. says that he is not guilty thereof; And of this he puts himself upon the country: And the said *A.* does so likewise, &c.
 And as to the residue of the said trespass, with the one gelding and one mare afore-^{As to residue,} said above supposed to be done, the said *B.* says that the said *A.* ought not to have^{justifies for common by prescription, as} his said action against him, because he^{a burges of the borough of} says that the said close, and also the place^{D.} in which the said trespass is above supposed to be done, are, and at the said time in which, &c. were 40 acres of land with the appurtenances in *D.* aforesaid, which said 40 acres of land with the appurtenances are; and at the said time in which, &c. and also from the time to the contrary whereof the memory of man is not, were parcel of a certain common field called *L.* in *D.* aforesaid. And the said *B.* further says, that the borough of *D.* in the county of *D.* is an antient borough, and that he the said *B.* is, and at the said time in which, &c. and long before, was and still is one of the burgeses of that borough, and that the burgeses of that borough, from the time to the contrary whereof the memory of man is not, until the 11th day of *July* in the 14th year of the reign of the lord *Charles* the first, late king of *England*, &c. were a body politic and corporate by the name of the bailiffs and burgeses of the borough of *D.* and by that name used to implead and be impleaded. And the said *E.* further says, that in and upon the said 11th day of

Mellor v. Walker, entr. Hil. 21 & 22 Car. 2. 10. 1283. 1 Vent. 21, 92. 2 Saund. 4. 1 Sid. 462. 2 Keb. 658, 676, 858.

Letters patent.

Profert.

July in the 14th year of the reign of the lord *Charles I.* late king of *England*, &c. the said lord king *Charles I.* by his letters patent made under his great seal of *England*, bearing date at *Westminster* the 11th day of *July* in the said 14th year of his reign, constituted and created the bailiffs and burgeses of the borough aforesaid to be from thenceforth for ever a body politic and corporate, by the name of mayor and burgeses of the borough of *D.* in the county of *D.* as by the said letters patent which the said *B.* brings here into court more fully appears. And the said *B.* further says, that the said bailiffs and burgeses, from the time to the contrary whereof the memory of man is not, until the said 11th day of *July* in the said 14th year of the reign of the said lord *Charles I.* and the mayor and burgeses of the said borough, upon the said 11th day of *July* in the 14th year aforesaid, and continually afterwards hitherto, have had, and for the whole time aforesaid have been used to have, for themselves and every burges of the said borough, common of pasture in the said field called *L.* whereof, &c. for all their cattle commonable within the said borough of *D.* levant and couchant, to wit, in every two years coming together when the said field called *L.* whereof, &c. in which, &c. or any part thereof was sowed with any corn after the said corn in the said field called *L.* whereof, &c. was mowed and carried away, until the said

saïd field or any part thereof was re-sowed with corn, and in every third year when the saïd field called *L.* whereof, &c. lay fresh and fallow then for the whole year; *Whereby* the saïd *B.* on the first day of *August* in the 20th year of the reign of our Lord the present king, which was the third year in which the saïd field called *L.* lay fresh and fallow, put his saïd gelding and mare which were the proper cattle of the saïd *B.* and levant and couchant, within the saïd borough of *D.* into the saïd field called *L.* whereof, &c. to eat the grafs growing in the same, in using his saïd common, and with his feet in walking for that cause, and with his saïd gelding and mare eat up, trod down and consumed the saïd grafs then growing in the saïd close in which, &c. as it was lawful for him to do, which are the same residue of the saïd trespasss whereof the saïd *H.* above complains against him; *Without this*, that he the saïd *B.* is guilty of any trespass in the saïd place in which, &c. with the saïd gelding and mare, at any time after the saïd field or any part thereof was in any year sowed with corn, and before the corn in the same year in the saïd field called *L.* was mowed and carried away; And this he is ready to verify: Wherefore he prays judgment if the saïd *H.* ought to have his saïd action against him, &c.

And the saïd *A. W.* and *G. W.* by *T. H.* *Plea in assault by two defendants, as to their attorney come and defend the force and part not guilty.*

and injury when, &c. And as to the coming with force and arms, and all the trespass aforesaid, except the assaulting, beating and wounding the said *J.* by them supposed to be committed, they say that they are in no wise guilty thereof; And of this they put themselves upon the country: And the said *J. H.* likewise, &c.

Issue.

As to the residue, one defendant pleads Son assault demesne.

And as to the assaulting, beating and wounding the said *J.* above supposed to be committed by the said *A.* she the said *A.* says that the said *J.* ought not to have or maintain his said action against her for the same, because she says that the said *J.* upon the same day and year in the said declaration above mentioned, at *B.* aforesaid, with force and arms made an assault upon her the said *A.* and would then and there have beat, wounded and evil-treated her, for which cause she the said *A.* then and there defended herself against the said *J.* And the said *A.* saith, if any damage or ill then and there befel the said *J.* the same was from the proper assault of the said *J.* upon the said *A.* and in defence of the said *A.* And this she is ready to verify: Wherefore she prays judgment, if the said *J.* ought to have or maintain his said action against her for the same. And the said *G.* as to the assaulting, beating and wounding of the said *J.* above supposed to be committed by her, the said *G.* saith that the said *J.* ought not to have or maintain his said action against her for the same, because she says, that

The other a special Son assault, viz. The two defendants were sisters, the plaintiff and the first defendant were fighting, the second defendant to preserve the peace, and in defending her sister, molliter manus imposuit; whereupon plaintiff assaulted her, et sic, &c.

at

at the said time when the said trespass is above supposed to have been committed by the said G. they the said A. being the sister of the said G. and the said J. with force and arms, &c. were fighting together, and would have beat, wounded and evil treated each other at B. aforesaid; whereupon the said G. for preservation of the peace of his said majesty, and to prevent the said A. and J. from doing bodily hurt to each other, and in defence of her said sister, then and there interposed between them, and gently laid her hands on the said J. to part them the said A. and J. from further fighting one with the other, and to prevent the said J. from doing bodily hurt to her said sister A. Upon which the said J. then and there with force and arms made an assault upon her the said G. and then and there would have beat, wounded and evil treated her; whereupon the said G. then and there defended herself against the said J. And the said G. saith, that if any damage or ill then and there befel the said J. the same was from the cause aforesaid, and from the assault of the said J. upon her the said G. and in defence of the said G. as aforesaid; And this she is ready to verify: Wherefore she prays judgment, if the said J. ought to have or maintain his said action against her for the same.

And the said J. as to the plea of the aforesaid A. as to the aforesaid assaulting, beating and wounding of him the said J. *Replication to the plea of the first defendants,* de injuria sua by propria.

by her the said *A.* saith, that by reason of any thing by the said *A.* in her plea aforesaid alledged, he ought not to be barred from having his action aforesaid against her for the same, because he saith that she the said *A.* of her own wrong, and without the cause by her in her plea aforesaid alledged, the day and year aforesaid, at *B.* aforesaid, did assault, beat and wound him the said *J.* in manner and form as the said *J.* above complains against her; And this he prays may be inquired of by the country: *And* the said *A.* likewise, &c. *And* the said *J.* as to the plea aforesaid of her the said *G.* as to the said assaulting, beating and wounding of him the said *J.* by her the said *G.* saith, that by reason of any thing by her the said *G.* in her plea aforesaid alledged, he ought not to be barred from having his said action against her for the same, because he saith that she the said *G.* of her own wrong, and without the cause by her in her plea aforesaid alledged, to wit, the day and year aforesaid, at *B.* aforesaid, did assault, beat and wound the said *J.* in manner and form as he the said *J.* above complains against her; And this he likewise prays may be inquired of by the country; *And* the said *G.* likewise, &c. *Therefore*, as well to try that issue, as the several other issues above joined between the said parties, the sheriff, &c.

Issue.

To the plea of the second defendant, de injuria sua propria.

Issue and Verdict awarded.

And

And the said N. and J. by H. B. their *Affault.*
attorney come and defend the force and
injury when, &c. And the said J. says *Plea, not*
he is in no wise guilty of the trespass afore- *guilty by one*
said, as the said J. above complains against *defendant.*
him; And of this he puts himself upon *Issue.*
the country: And the said J. does the
like. And the said N. as to the coming *Not guilty, as*
with force and arms, and as to the wound- *to part, by the*
ing of the said J. and the tearing of her *other defen-*
clothes aforesaid above supposed to be *dant.*
committed, says that he is in no wise
guilty thereof, as the said J. above com-
plains thereof against him; And of this
he puts himself upon the country: *And Issue.*
the said J. does the like. And as to the *As to the re-*
residue of the trespass aforesaid above sup- *sidue, plaintiff*
posed to be committed, the said N. says *entered into*
that the said J. ought not to have her *the defendant's*
aforesaid action against him, because he *dwelling-house*
says, that at the aforesaid time when it is *and disturbed*
supposed the aforesaid trespass was com- *him in the pos-*
mitted, he was lawfully possessed of a cer- *session of it,*
tain mesuage, being his dwelling-house in *and defendant*
P. in the county aforesaid; and he the *molliter ma-*
said N. being so possessed of the said me- *nus imposuit.*
suage aforesaid, the said J. without the
leave of him the said N. did enter into
the aforesaid house, and did tarry there
and greatly disturb him in the possession
thereof; whereupon the said N. then and
there requested the said J. to depart out
of the aforesaid house of him the said N.
which she then and there wholly refused
to do; wherefore the said N. to cause
the

*Traverse the
place.*

the said J. to depart from thence, did gently lay his hands upon the said J. in the said house, to put her out of the said house, and did put her out of the house aforesaid, which are the aforesaid residue of the trespass aforesaid whereof the said J. above complains; *Without this*, that the said N. is guilty of the aforesaid residue of the trespass aforesaid, at B. aforesaid, or elsewhere than at P. aforesaid; And this the said N. is ready to verify: Wherefore he prays judgment, if the said J. ought to have her aforesaid action against him for the same.

Replication, *de injuria sua propria*.

*Plea in af-
fault and im-
prisonment.*

*As to part,
not guilty.*

*As to the re-
sidue,*

And the said A. by S. F. his attorney comes and defends the force and injury when, &c. And as to the coming with force and arms, and all the said several trespasses supposed to be done, except the said assault, imprisoning, and detaining and keeping in prison of the said C. for the time in the declaration aforesaid first above mentioned, supposed to be done, he saith that he is not guilty thereof, as the said C. above complaineth against him; And of this he putteth himself upon the country, &c. And the said C. doth the like, &c. And as to the said assault, evilly treating, imprisoning, and detaining and keeping in prison of the said C. in the declaration aforesaid first above mentioned supposed to be done, the said A. saith that the said C. ought not to have his action aforesaid against him for the same, because

because he saith, that long before the time aforesaid in which, *E. C.* and at the same time in which, *E. C.* and continually afterwards hitherto, he the said *A.* was and is keeper of the common gaol of our fovereign lord the king of his county of *T.* aforesaid, at the castle of *T.* aforesaid in the said county; And that long before the said time in which, *E. C.* to wit, in the term of *St. Hilary* in the 11th year of the reign of the lord the now king, a certain writ of *Ca. ad respon.* directed to the then sheriff of the county of *T.* aforesaid, did issue out of the court of our said lord the king of the bench then being at *W.* in the county of *M.* by which said writ our said fovereign lord the king commanded the said then sheriff that he should take the said *C. D.* and him safely keep, so that he might have his body before the justices of our said lord the king at *W.* aforesaid, from the day of *Easter* in fifteen days to answer *E. F.* in a plea of trespass, and also in a certain plea of trespass on the case, upon promise, to the damage of the said *E.* 30 l. Which said writ afterwards, and before the return thereof, to wit, on the 12th day of *March* in the year last above mentioned, at the castle of *T.* aforesaid, was delivered to *G. H. Esq;* then sheriff of *T.* in due form of law to be executed. By virtue of which said writ the said *G. H.* then being sheriff of the said county, afterwards, and before the return of the said writ, that is to say, the said 12th day of *March*

Defendant is keeper of the county gaol of York.

Ca. ad respondendum issued against plaintiff.

Writ delivered to the sheriff.

Plaintiff arrested thereon.

Plaintiff committed to the custody of defendant.

March in the said year last above mentioned, at the castle of *T.* aforesaid, the said *C. D.* in due form of law arrested and took into his custody; And the said *C. D.* being then in custody of the said sheriff upon the arrest aforesaid, he the said *G. H.* being then sheriff of the county aforesaid, afterwards and before the return of the said writ, to wit, the said 12th day of *March* in the year last above mentioned, at the castle of *T.* aforesaid, by his certain warrant under the seal of his office of sheriff of the county of *T.* aforesaid sealed, and to the said *A.* then keeper of the gaol aforesaid directed, commanded that he the said *A.* should take into his custody the body of the said *C. D.* and him safely keep, so that the said sheriff might have his body before the said justices of our said lord the king at *W.* from the said day of *Easter* in fifteen days to answer the said *F.* of the said plea of trespass on the case, upon promise, to the damage of the said *E.* 30 *l.* By virtue of which said warrant the said *A.* afterwards and before the return of the said writ, to wit, the same 12th day of *March* aforesaid, in the year last above-mentioned, the said *A.* being then keeper of the said gaol, the said gaol being then at the castle of *T.* aforesaid, did gently lay his hands upon the said *C.* to take him into his custody in the gaol aforesaid for the cause aforesaid, and him the said *C.* then and there for the cause aforesaid did take into his

his custody in the gaol aforesaid, by virtue of the said warrant, and according to the duty of his said office did detain for the time in the declaration aforesaid mentioned, that is to say, until such time as he the said C. by due course of law was out of the custody of him the said A. as gaoler as aforesaid delivered, as it was lawful for him to do, which are the assault, evilly treating, imprisoning, and detaining and keeping in prison of the said C. by the time aforesaid in the said declaration first above-mentioned supposed to be done, whereof the said C. above complains against him; *Without this, Traverse.* that the said A. is guilty of the said trespass, assault, imprisoning, and detaining and keeping in prison of the said C. at any time before the taking and receiving of the said C. into the gaol aforesaid, for the cause aforesaid, or at any time after his said discharge out of the said gaol as aforesaid; And this he is ready to verify: Wherefore he prays judgment, if the said C. ought to have or maintain his action aforesaid against him, &c.

And the said C. as to the said plea of *Replication*, the said A. above pleaded in bar, as to the said assault, evilly treating, imprisoning, and detaining and keeping in prison of the said C. above done, saith, that he by any thing before alledged ought not to be barred from having his said action for the same against him, because he saith that he the said A. is guilty of the said trespass,

defendant is guilty after plaintiff was discharged.

trespafs, assault, imprifoning, and detain-
ing and keeping in prifon of the faid C.
after his faid difcharge out of the faid
gaol in the faid plea mentioned in manner
and form as the faid C. hath above de-
clared againft him; And this he prays
may be inquired of by the country: *And*
the faid A. doth the like. *Therefore, &c.*

Issue.

*Plea in case
for words ju-
stifies the
words.*

And the faid T. R. by J. G. his attorney
comes and defends the force and injury
when, *&c.* and fays that the faid T. G.
ought not to have his faid action againft
him, becaufe he fays that the faid T. G.
at the refpective times of fpeaking of the
faid refpective words fo fspoken by the
faid T. R. of the faid T. G. as aforefaid,
was a sodomite and a buggerer, to wit,
at S. aforefaid; and therefore he the faid
T. R. fpoke of the faid T. G. the faid fe-
veral words above mentioned, as it was
lawful for him; And this he is ready to
verify: Wherefore he prays judgment, if
the faid T. G. ought to have his faid action
againft him, *&c.*

*Replication,
de injuria sua
propria.*

And the faid T. G. faith, that he by
any thing by the faid T. R. in pleading
above alledged ought not to be precluded
from having his action aforefaid againft
him, becaufe he faith that the faid T. R.
of his own wrong, without fuch caufe by
the faid T. R. above in pleading alledged,
on the faid 1st day of *May* in the year of
our Lord 1736. at S. aforefaid, did fay,
affirm, declare and publifh, of and con-
cerning the faid T. G. the faid words in
the

the said declaration first above specified, that is to say, You, &c. [as in the declaration] and also afterwards, to wit, on the same day and year at S. aforesaid, the said T. R. with a loud voice did speak, rehearse, proclaim, publish and declare of the said T. G. the other words in the said declaration last above specified, that is to say, You, &c. [as in the declaration] in manner and form as the said T. G. hath thereof above declared; And this he prays may be inquired of by the country: And the said T. R. likewise. Therefore, &c.

Case.

London, to wit, W. C. complains of J. G. *Declaration in*
 being in the custody of the marshal *case Sur as-*
 of the *Marshalsea* of our lord the king, *sumpsit, upon*
 before the king himself; For that whereas *a policy of in-*
 the said W. on the 30th day of December *Policy of in-* B. R.
 in the year of our Lord 1741. at London *urance.*
 aforesaid, at the parish of St. Mary le Bow
 in the ward of Cheap, according to the
 usage and custom of merchants caused to
 be made a certain writing of assurance,
 commonly called a policy of insurance,
 by which said writing the said W. by the
 name of Mr. W. C. as well in his own
 name as for and in the name and names
 of all and every other person or persons
 to whom the same did, might or should
 appertain, in part or in all, did make as-
 surance, and cause himself and them, and
 every

every of them, to be insured, lost or not lost, at and from *Rotterdam* to *Gottenburg*, and at and from *Gottenburg* to *Belfast*, upon any kind of goods and merchandize; and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of and in the good ship or vessel called *The William and James*, whereof was master under God for the present voyage captain *G. A.* or whosoever else should go for master in the said ship, or by whatsoever other name or names the same ship or the master thereof was or should be named or called, beginning the adventure upon the said goods and merchandizes from the loading thereof aboard the ship at *Rotterdam* upon the said ship, &c. from and immediately following her first arrival at *Rotterdam*, and so should continue and endure during her abode there upon the said ship, &c. and further until the said ship with all her ordnance, tackle, apparel, &c. and goods and merchandizes whatsoever, should be arrived at *Belfast* upon the ship, &c. until she had moored at anchor 24 hours in good safety, and upon the goods and merchandizes, until the same should be there discharged and safely landed; And it should be lawful for the said ship, &c. in that voyage to proceed and sail to, and touch and stay at any ports or places whatsoever, without prejudice to that insurance; the said ship, &c. goods and merchandizes, &c. for so much as concerned

cerned the assureds, by agreement between the assureds and the assurers in that policy, were and should be valued at on ship and goods, both or either, as interest should appear, without further account to be given by the assureds for the same; touching the adventures and perils which they the assurers were contented to bear and did take upon them in that voyage, they were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettizons, letters of mart and countermart, surprizals, takings at sea, arrests, restraints and detrainments of all kings, princes and people, of what nation, condition or quality soever, barretty of the master and mariners, and of all other perils, losses and misfortunes that had or should come to the hurt, detriment or damage of the said goods, merchandizes and ship, &c. or any part thereof; and in case of any loss or misfortune, it should be lawful for the assureds, their factors, servants and assigns, to sue, labour and travel for, in and about the defence, safeguard and recovery of the said goods, merchandizes, ship, &c. or any part thereof, without prejudice to that insurance, to the charges whereof they the assurers would contribute each one according to the rate and quantity of his sum therein assured: And it was agreed by them the insurers, that that writing or policy of assurance should be of as much force and effect as the surest writing or policy of assurance theretofore made in

Lombard-street or in the *Royal Exchange*, or elsewhere in *London*; and so they the assurers were contented and did thereby promise and bind themselves, each one for his own part, their heirs, executors and goods, to the assureds, their executors, administrators and assigns, for the true performance of the premisses, confessing themselves paid the consideration due unto them for that assurance by the assureds — at and after the rate of — per cent. and in case of loss (which God forbid) the assureds to abate 2 l. per cent. In witness whereof they the assurers subscribed their names and sums assured in *London*, the 30th day of — in the year of our Lord 1741. And thereupon the said J. G. afterwards, to wit, on the said 30th day of *December* in the year aforesaid, at *London* aforesaid in the parish and ward aforesaid, in consideration that the said W. C. had then and there, at the special instance and request of the said J. G. paid to the said J. G. the sum of 4 l. 19 s. and 8 d. of lawful money of *Great Britain*, for the assurance of 73 l. upon the premisses in the said writing or policy of assurance mentioned, according to the tenor thereof, and had undertaken, and then and there faithfully promised to the said J. G. to perform and fulfil all and singular the aforesaid premisses contained in the said writing or policy of assurance mentioned on the part and behalf of the assured to be — per-

Subscribed by
assurers.

Assumpsit.

performed, then and there undertook, and to the said *W. C.* then and there faithfully promised that he the said *J. G.* would become an insurer to the said *W. C.* as to 73 *l.* according to the tenor and true intent of the said writing or policy of assurance; and that he the said *J. G.* would well and faithfully perform and fulfil all and singular the matters and things in the said writing or policy of assurance contained on the part and behalf of him the said *J. G.* as such an insurer, to be performed and fulfilled to the said *W. C.* as to the said 73 *l.* And the said *J. G.* did then and there subscribe the said writing or policy of assurance as an insurer for the aforesaid sum of 73 *l.* And the said *W. C.* in fact says, that after the first arrival of the said ship at *Rotterdam* aforesaid, that is to say, on the 1st day of *January* in the said year of our Lord 1741. aforesaid, at *Rotterdam* aforesaid, being in parts beyond the seas, divers goods and merchandizes to the value of 40 *l.* and upwards were shipped and loaded on board the aforesaid ship, and until and at the time of the loss of the said ship herein after mentioned were and remained aboard the same ship. And the said *W. C.* doth *Assurance made in trust.* further aver, that the assurance aforesaid so made by the said *W. C.* and in his name, as touching the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of the said ship, was made in trust, and for the use and benefit

of one *J. C.* and that the interest of the said *J. C.* which he had in the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of the said ship, at the time of making the said writing of assurance and promise amounted to the value of 35 *l.* of lawful money of this realm, and upwards, to wit, at *L.* aforesaid, in the parish and ward aforesaid; and that the assurance aforesaid so made by the said *W. C.* and in his name, as touching the said goods and merchandize as aforesaid, was made in trust and for the use and benefit of one *T. G.* and that the interest of the said *T. G.* which he had in the said goods and merchandize so shipped and loaded on board the said ship as aforesaid, at the time that the same were so shipped and loaded on board as aforesaid, amounted to the value of 38 *l.* of lawful money of this realm, and upwards, that is to say, at *L.* aforesaid in the parish and ward aforesaid. And the said *W. C.* further in fact says, that the said ship, with the said goods and merchandizes so loaden on board her, afterwards, that is to say, on the said 1st day of *January* in the said year of our Lord 1741. according to the intention of the said writing of assurance, set sail and departed from *Rotterdam* aforesaid in parts beyond the seas, in her voyage aforesaid towards *Gottenburg* aforesaid; and afterwards, to wit, on the 8th day of *January* in the year aforesaid, the said ship, with the

Ship sailed.

the said goods and merchandizes loaden on board her, and with all the tackle, apparel, ordnance, munition, artillery, boat, and other furniture of the same ship sailing and proceeding in the said voyage towards *Gottenburg* aforesaid, and before her arrival there, by tempests and perils of the sea, to wit, violent winds, storms, and a rough sea, was shipwrecked and lost in the sea, by which the said ship, goods and merchandizes, and all other things in the same and thereunto belonging, were totally destroyed, perished and lost there, and became of no value to the owners thereof, to wit, at *L.* aforesaid, in the parish and ward aforesaid; of which premisses the said *J. G.* afterwards, that is to say, on the 1st day of *May* in the year of our Lord 1743. there had notice, and was then and there requested by the said *W. C.* to pay him 71 *l.* 10 *s.* and 9 *d.* $\frac{1}{2}$, parcel of the said 73 *l.* as assured as aforesaid, deducting 1 *l.* 9 *s.* 2 *d.* $\frac{1}{2}$, residue of the said 73 *l.* in respect of the loss aforesaid, which said 71 *l.* 10 *s.* and 9 $\frac{1}{2}$, the said *J. G.* ought to have paid to the said *W. C.* according to the form and effect of the said policy of assurance. *And whereas* also the said *J. G.* afterwards, that is to say, on the same day and year last mentioned, at *L.* aforesaid, at the parish and ward aforesaid, was indebted to the said *W. C.* in the further sum of 10 *l.* of lawful money of *G. B.* for so much money by the said *J. G.* before that time had and

*Ship wrecked.**Notice.**Indeb. ass.**for money had and received.*

Breach.

received to the use of the said *W. C.* And being so indebted, he the said *J. G.* in consideration thereof afterwards, that is to say, on the same day and year last mentioned, at *L.* aforesaid, at the parish and ward aforesaid, undertook, and to the said *W. C.* then and there faithfully promised to pay to him the said last mentioned sum of money. *Nevertheless* the said *J. G.* not regarding his said several promises and undertakings so made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W. C.* in this behalf, hath not paid to him the said several sums of money, or either of them, or any part thereof; although to pay the same to him the said *W. C.* he the said *J. G.* afterwards, that is to say, on the same day and year last mentioned, at *L.* aforesaid, at the parish and ward aforesaid, was requested by the said *W. C.* But the said *J. G.* to pay the same to him hath hitherto refused, and doth yet refuse, to the damage of the said *W. C.* 100 l. And thereof he brings suit, &c.

*Declaration in
case Sur ass.*

on a foreign

*bill of ex-
change, by the
indorsee against*

the drawee.

B. R.

Lil. Ent. 90.

Bill drawn.

B. C. for plaintiff, } *Pledges to* { *J. D.*
and } *and*
— for defendant, } *prosecute* { *R. R.*

Middlesex, to wit, *J. D. B.* complains of *A. H.* in the custody of the marshal of the *Marshalsea* of our Lord the king, before the king himself, for this, That *whereas* one *R. T.* upon the 25th day of *December*

December in the year of our Lord 1735. residing and merchandizing at C. in parts beyond the seas, to wit, in the kingdom of *Ireland*, according to the usage and custom of merchants, then and there made his bill of exchange with his own hand thereto subscribed, bearing date the same day and year above-mentioned, and directed the said bill of exchange to the said A. by the name of Mr. A. H. of *Bow-street Westminster*, (the said A. then residing and merchandizing in *Bow-street* in *Westminster* in the said county of *Middlesex*) and by the said bill of exchange the said R. requested the said A. at 21 days sight thereof, to pay to one S. F. by the name of Mr. S. F. or order, the sum of 308 l. 9 s. and 4 d. it being for forty double powers, and Mr. L. and Mr. H.'s half-pay to *June* and *December* 1735. by said powers and bills delivered the said Mr. F. And the said S. F. afterwards, *Indorsed to* to wit, upon the same 25th day of *De-* *plaintiff.* *cember* in the year above said, at W. afore said in the said county of M. by his indorsement then and there made on the said bill, according to the usage and custom of merchants, appointed the contents of the said bill to be paid to the said J. D. B. by the name of Mr. D. B. or order, value in account; *Whereof* the said *Notice to de-* A. then and there had notice. *And the* *sendant.* said A. afterwards, to wit, upon the said *Bill accepted* 25th day of *December* afore said in the year *by defendant.* above mentioned, at W. afore said in the county afore said, had sight of the said bill

Assumpsit.

bill, and then and there according to the usage and custom of merchants accepted the same; by reason whereof the said *A.* according to the usage and custom of merchants, became liable to pay to the said *J. D. B.* the said money mentioned in the said bill: And thereupon the said *A.* being so liable, in consideration thereof afterwards, to wit, upon the same day and year above mentioned, at *W.* aforesaid, took upon himself, and to the said *J. D. B.* then and there faithfully promised to pay him the said sum of money in the said bill contained, according to the tenor of the said bill.

Account for money lent.

Another for money had and received.

*Declaration in
case Sur ass.
on a foreign
bill of exchange
by the person
to whom made
payable, against
the drawee,
the drawee
refusing to ac-
cept it. C. B.
Pas. 10 G. 2.
ro. 1035.
Lil. Ent. 55.*

*Custom of mer-
chants.*

London, to wit, *J. C.* late of, &c. was attached to answer unto *T. P.* of a plea of trespass upon the case, &c. And whereupon the said *T.* by *P. W.* his attorney complains, that *whereas* there now is, and from time immemorial hath been, an ancient and laudable custom used and approved of by and amongst merchants and other persons, residing, trading, and using commerce in parts beyond the seas, and merchants and other persons, residing, trading, and using commerce within this kingdom of *E.* to wit, that if any merchant or other person, residing, trading, and using commerce in parts beyond the seas, shall have made any bill of exchange in writing, with his own proper hand thereto subscribed, and shall have directed such bill to any merchant or merchants, or other person

person or persons, residing, trading, and using commerce within this kingdom of *England*, and by such bill shall have required such merchant or merchants, or such other person or persons to whom such bill shall have been directed, to pay to any other merchant or other person, residing, trading, and using commerce in parts beyond the seas, and named in such bill or order, any sum of money in such bill mentioned, at any time mentioned in such bill, and appointed by such bill for the payment thereof; and if such merchant or merchants, person or persons, to whom such bill shall have been directed, upon sight of such bill shall have refused to accept such bill, or to pay such sum of money in such bill mentioned, at the time mentioned in such bill for payment thereof, to such merchant or other person to whom or to whose order such sum of money in such bill mentioned, by such bill shall have been appointed to be paid; and if such merchant or other person, to whom or whose order such sum of money in such bill mentioned, by such bill shall have been appointed to be paid, shall have caused such bill to be protested in writing for such non-acceptance or non-payment thereof; Then such merchant or other person, who shall so have made such bill, upon notice of such non-acceptance or non-payment and protest, hath for all the time aforesaid been liable, and hath been used and accustomed to be liable, and for
all

*Plaintiff and
defendant re-
siding beyond
sea, drawees
residing in
England.*

*Bill drawn by
defendant pay-
able to plain-
tiff.*

*Shewn to the
drawees.*

all the time aforesaid hath ought to have been liable, and still is liable to pay to such merchant or other person named in such bill, to whom or whose order such sum of money in such bill mentioned, by such bill shall have been so appointed to have been paid. *And whereas* at the several times hereafter next mentioned the said *J.* and *T.* were persons residing, trading, and using commerce in parts beyond the seas, to wit, at *St. Martin's* in the kingdom of *France*, and one *P. C.* and *D. C.* were persons residing, trading, and using commerce within this kingdom of *England*, to wit, at *London* aforesaid, and the said *P.* and *D.* were then and there partners in their said commerce; And being so respectively residing, trading, and using commerce as aforesaid, the said *I.* on the 3d day of *April* in the year of our Lord 1732. new stile, in parts beyond the seas, to wit, at *St. Martin's* aforesaid in the kingdom of *France*, made his certain bill of exchange in writing, with his own proper hand thereto subscribed, according to the custom aforesaid, and then and there directed the said bill, bearing date the same day and year, to the said *P.* and *D.* and by the said bill required the said *P.* and *D.* at two usances, to pay that his first bill of exchange to the said *T.* or order, 75 l. 18 s. sterling, value received of the said *T.* and for ballance of him the said *I.*'s account with the said *P.* and *D.* as by advice from the said *I.* Which said bill

bill of exchange he the said T. afterwards, to wit, on the 16th day of *April* in the year of our Lord 1732. *English* stile, at *London* aforesaid, to wit, at the parish of *St. Mary le Bow* in the ward of *Cheap*, shewed to the said P. and D. and then and there required the said P. and D. to accept the said bill according to the said custom: But the said P. and D. then and there refused to accept the said bill, or ever to pay to the said T. the said sum of money mentioned in the said bill, or any part thereof: By reason whereof he the said T. afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, caused the said bill to be duly protested in writing, for such non-acceptance thereof by the said P. and D. Of which said non-acceptance of the said bill, and of the said protest of the said bill for the said non-acceptance thereof, he the said T. afterwards, to wit, on the 17th day of *April* in the said year of our Lord 1732. *English* stile, at *L.* aforesaid, in the parish and ward aforesaid, gave notice to the said I. By reason of which said premisses, and according to the custom aforesaid, he the said I. became liable to pay to the said T. the said sum of money mentioned in the said bill; And being so liable, he the said I. in consideration thereof, afterwards, to wit, the same day and year last aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully

They refuse to accept it.

Bill protested.

Notice to defendant.

Assumpsit.

Second count.

*Bill drawn by
defendant pay-
able to plain-
tiff.*

*Shewn to
drawers.*

faithfully promised the said *T.* to pay him the said sum of money mentioned in the said bill, when he should be afterwards thereto requested. *And whereas* the said *I.* and *T.* and *P.* and *D.* being so respectively residing, trading, and using commerce as aforesaid, and the said *P.* and *D.* being partners in their said commerce as aforesaid, the said *I.* afterwards, to wit, on the said 3d day of *April* in the year of our Lord 1732. aforesaid, new stile, in parts beyond the seas, to wit, at *St. Martin's* aforesaid in the said kingdom of *France*, made his certain other bill of exchange in writing, subscribed with his own proper hand, according to the said custom, and the said last mentioned bill bearing date the same day and year last aforesaid, directed to the said *P.* and *D.* and by the said last mentioned bill required the said *P.* and *D.* at two usances to pay that his first bill of exchange to the said *T.* or order, other 75 *l.* 18 *s.* sterling, value received of him the said *T.* and for ballance of his the said *I.*'s account with the said *P.* and *D.* as by advice from the said *I.* Which said last mentioned bill of exchange he the said *T.* afterwards, to wit, on the 26th day of *May* in the year of our Lord 1732. aforesaid, *English* stile, at *London* aforesaid, in the parish and ward aforesaid, shewed to the said *P.* and *D.* for their acceptance and payment thereof, and then and there requested the said *P.* and *D.* to accept and pay

pay the said last mentioned bill, according to the tenor of the same bill, and the custom aforesaid: And the said P. and D. *They refuse to accept it.*

then and there refused to accept the said last mentioned bill, or ever to pay to the said T. the said sum of money mentioned in the said last mentioned bill, or any part thereof: By reason of which said last mentioned *Bill protested.*

premisses he the said T. afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, caused the said last mentioned bill to be duly protested in writing for such non-acceptance and non-payment thereof by the said P. and D.

Of which said non-acceptance and non-payment of the said last mentioned bill, *Notice to defendant.*

and of the said last mentioned protest of the said last mentioned bill for the said non-acceptance and non-payment thereof, he the said T. afterwards, to wit, on the said 26th day of May in the year of our Lord 1732. aforesaid, *English* stile, at L. aforesaid, in the parish and ward aforesaid, gave notice to the said I. by reason whereof, and according to the custom aforesaid, he the said I. became liable [*ut supra.*]

And whereas at the several times hereafter *Third count.* mentioned the said I. and T. and P. and D. were persons residing, trading, and *Plaintiff, defendant, and drawees residing in London.* using commerce within this kingdom of England, to wit, at L. aforesaid, in the parish and ward aforesaid, and the said P. and D. were then and there partners in their said commerce, and being so residing,

*Bill drawing
by defendant
payable to
plaintiff.*

*Shewn to
drawees.*

*They refuse to
accept it.*

*Notice to de-
fendant.*

residing, trading, and using commerce, the said *I.* afterwards, to wit, on the 3d day of *April* in the year of our Lord 1732. at *L.* aforesaid, in the parish and ward aforesaid, made his certain other bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants from time immemorial used and approved, and the said last mentioned bill, bearing date the same day and year last aforesaid, directed to the said *P.* and *D.* and by the said last mentioned bill required the said *P.* and *D.* at two usances to pay that his first bill of exchange to the said *T.* or order, other 75 *l.* 18 *s.* sterling, value received of the said *T.* and for ballance of his the said *I.*'s account with the said *P.* and *D.* as by advice from the said *I.* which said last mentioned bill of exchange he the said *T.* afterwards, to wit, on the 6th day of *June* in the year of our Lord 1732. aforesaid, at *L.* aforesaid, at the parish and ward aforesaid, shewed to the said *P.* and *D.* and then and there required the said *P.* and *D.* to accept the said last mentioned bill according to the said custom; but the said *P.* and *D.* then and there wholly refused to accept the said last mentioned bill, or ever to pay to the said *T.* the said sum of money specified in the said last mentioned bill, or any part thereof: Of all which said last mentioned premisses he the said *I.* afterwards, to wit, on the 8th day of *June* in the year aforesaid, at *L.* aforesaid,

aforesaid, in the parish and ward aforesaid, had notice. By reason of which said last mentioned premisses, and according to the said custom, and by the law of merchants, he the said *I.* became liable [*ut supra.*]

Indeb. ass. for money lent and accommodated 1 Jan. 1736.

Had and received.

Laid out and expended.

London, to wit, *R. P.* complains of *S. T.* *Case Sur ass.*
 gent. one of the attornies of the court of *against an*
 the lord the present king before the king *attorney, as*
 himself present here in court in his pro- *drawee of an*
 per person, for that, that is to say, that *inland bill of*
whereas one *R. T.* and *W. T.* on the 3d *exchange, by*
 day of September in the year of our Lord *a third in-*
 1726. at *L.* aforesaid, that is to say, in *dorsee, to*
 the parish of *St. Mary le Bow* in the ward *whom it was*
 of *Cheap*, according to the usage and cu- *indorsed by the*
 stom of merchants, made their certain first *servant of the*
 bill of exchange in writing, their proper *second indorsee.*
 hands being thereunto subscribed, bearing *B. R.*
 date the same day and year, and then and *Bill drawn by*
 there directed the said bill to the said *two.*
S. by which said bill the said *R.* and *W.* re-
 requested him the said *S.* that he the said *S.*
 two months after the date of the said bill,
 would pay to one *W. F. Esq;* (by the name
 of *W. F.*) or his order, 333 *l.* 12 *s.* sterling,
 for value received by them the said *R.* and
W. T. And the said *W. F.* afterwards, that *First indorse-*
 is to say, on the day and year aforesaid, *ment to two*
 at *L.* aforesaid, in the parish and ward *partners.*
 aforesaid (the said sum of money being
 intirely

Second indorsement by one for himself and partner, to three co-partners.

Defendant accepts the bill.

Third indorsement by a servant of the second indorsee.

intirely unpaid to him) indorsed the said bill, his proper hand being thereunto subscribed, and by the same indorsement appointed the contents of the same bill to be paid to one *T. D.* and *A. W.* then and there being partners in the art of a mercer, by the name of messieurs *D.* and *W.* or their order. *And* the said *T.* (the said *T.* and *A.* then being partners in the said art, and the said sum of money being wholly unpaid to the said *T.* and *A.*) for himself and his said partner, afterwards, that is to say, on the day and year abovesaid, at *L.* aforesaid, in the parish and ward aforesaid, indorsed the said bill, his proper hand being thereunto subscribed, and by the same indorsement appointed the contents of the same bill to be paid to *D. A. M. D.* and *J. G.* by the name of messieurs *D. A.* and comp. or their order, value in account (the said *D. M.* and *J.* then and there being partners in the art of a weaver). *And* the same *S.* afterwards, that is to say, on the same day and year at *L.* aforesaid, in the parish and ward aforesaid, had sight of the said bill so indorsed, and upon the said sight thereof then and there accepted the same bill. *And* the same *D. M.* and *J.* being partners in the said art of a weaver afterwards, that is to say, on the same day and year, at *L.* aforesaid, in the parish and ward aforesaid, one *W. H.* then, and long before and afterwards, being a servant of the said *D. M.* and *J.* and by them the said

said *D. M.* and *J.* usually intrusted to indorse such bills on the behalf of the said *D. M.* and *J.* indorsed the said bill for and in the names of the said *D. M.* and *J.* by the names of *D. A.* and comp. and by the same indorsement appointed the contents of the same bill to be paid to the said *R.* for value received, the said sum of money in the said bill contained being then wholly unpaid, whereof the said *S.* then and there *Notice.* had notice. *By reason* of which said premisses, also by force of the said custom of merchants, the said *S.* according to the said usage and custom of merchants, became liable to pay to the said *R.* the said sum of money, according to the form and effect of the bill and indorsements aforesaid: *And* being so liable, the said *S.* in *Assumpsit.* consideration thereof, afterwards, that is to say, on the 1st day of *November* in the year aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *R.* to pay him the same sum of money, according to the tenor of the said bill and indorsements. *And whereas* also *Second count.* the said *R.* and *W. T.* on the said 3d day of *September* in the year of our Lord 1726. at *L.* aforesaid in the parish and ward aforesaid, according to the usage and custom of merchants, made their certain *Bill drawn.* other bill of exchange in writing, their proper hands being thereunto subscribed, bearing date the same day and year, and then and there directed that bill to the

First indorsement.

Second indorsement.

Bill accepted.

said *S.* by which said bill the said *R.* and *W. T.* requested him the said *S.* that he the said *S.* two months after the date of that bill would pay to the said *W. F.* (by the name of *W. F.*) or his order, other 333 *l* 12 *s.* 6 *d.* sterling, for value received by them the said *R.* and *W. T.* And the said *W. F.* afterwards, that is to say, on the day and year last above-mentioned, at *L.* aforesaid, in the parish and ward aforesaid, the said sum of money being intirely unpaid to him, indorsed the said last mentioned bill, his proper hand being thereunto subscribed, and by the same indorsement appointed the contents of the same bill to be paid to the said *T. D.* and *A. W.* then and still being partners in the said art of a mercer, by the names of messieurs *D.* and *W.* or their order. And the said *T.* (the said *T.* and *A.* being partners in the said art of a mercer, and the said sum of money being wholly unpaid to the said *T.* and *A.*) for himself and his said partner, afterwards, that is to say, on the day and year last above-mentioned, at *L.* aforesaid, in the parish and ward aforesaid, indorsed the said last mentioned bill, his proper hand being thereunto subscribed, and by the same indorsement appointed the contents of the same bill to be paid to the said *D. A. M. D.* and *J. G.* by the names of messieurs *D. A.* and comp. or their order, value in account (the said *D. M.* and *J.* then and still being partners in the said art of a weaver). And the said *S.* afterwards,

wards, that is to say, on the same day and year at *L.* aforesaid, in the parish and ward aforesaid, had sight of the said bill so indorsed, and then and there upon that sight thereof accepted the said bill. *And Third indorsement.* the said *D. M.* and *J.* being partners in the said art of a weaver, afterwards, and after the end of the said two months, that is to say, on the 5th day of *November* in the year abovesaid, at *L.* aforesaid, in the parish and ward aforesaid, the said *W. H.* then, and long before and afterwards, being a servant of the said *D. M.* and *J.* and usually intrusted by the said *D. M.* and *J.* to indorse such bills on the behalf of the said *D. M.* and *J.* indorsed the said bill for and in the names of the said *D. M.* and *J.* by the names of *D. A.* and comp. and by the same indorsement appointed the contents of the same bill to be paid to the said *R.* for value received, the said sum of money in the same bill contained then being wholly unpaid, Whereof the *Notice.* said *S.* then and there had notice: *By reason* of which said premisses, also by force of the said custom of merchants, the said *S.* according to the said usage and custom of merchants, became liable to pay to the said *R.* the said last mentioned sum of money; And being so *Assumpsit.* liable, the said *S.* in consideration thereof, afterwards, that is to say, on the 10th day of *November* in the year abovesaid, at *L.* aforesaid in the parish and ward aforesaid, undertook, and then and there

Breach.

faithfully promised the said R. to pay to him the same sum of money when he should be thereunto requested. Nevertheless the said S. not at all regarding his said promises and undertakings, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said R. in this behalf, has not yet paid the said several sums of money, or any part thereof, to the said R. (altho' the said S. afterwards, to wit, on the 1st day of *December* in the year of our Lord aforesaid, at L. aforesaid in the parish and ward aforesaid, was requested by the said R. so to do) but he hath hitherto wholly refused, and still doth refuse, to pay him the same, to the damage of the said R. of 500 l. And thereupon he brings suit, &c.

A. B. for the plaintiff, }
 Defendant in proper } Pledges of } J. D.
 person, } prosecuting } and
 } R. R.

Declaration in Middlesex, to wit, G. B. late of, &c.
case Sur ass. was attached to answer A. M. and E. C.
by the assignees assignees of the goods, debts and chattels
of the effects of H. V. a bankrupt, according to the
of a bankrupt. form of the statutes concerning bankrupts
 C. B. made and provided, in a plea of trespass
 on the case, &c. And whereupon the
 said A. M. and E. C. by W. W. their at-

On a promiss- torney complain, That whereas the said
ry note drawn G. after the 1st day of May in the year of
by defendant, our Lord 1705. and before he the said H.
and indorsed to V. became a bankrupt, to wit, the —
the bankrupt. day of — in the year of our Lord —,

at

at *W.* in the said county of *M.* made his certain note in writing, commonly called a promissory note, with his own proper hand thereto subscribed, bearing date the same day and year last mentioned, and the same note to one *J. M.* did then and there deliver, by which said note the said *G.* promised to pay to the said *J. M.* by the name of *J. M. Esq;* or order, one month after date, — value received; and by reason thereof, and also by force of the statute in such case made and provided, the said *G.* became chargeable to pay to the said *J. M.* or his order the same sum of money, according to the tenor of the said note. *And* the said *J. M.* after *Indorsement.* the making of the said note, and before the said sum mentioned in the said note, or any part thereof, was paid to him, and also before the time by the said note appointed for payment thereof, and also before the said *H. N.* became a bankrupt, to wit, the same day and year last mentioned, at *W.* aforesaid, indorsed the said note, with his own proper hand thereunto subscribed, and by the said indorsement appointed the contents of the said note to be paid to the said *H. V.* for value received, and for that purpose the said *J. M.* did then and there deliver the said note so indorsed to the said *H. V.* Whereof the said *G.* afterwards, to wit, the day and year last mentioned, at *W.* aforesaid, had notice; and by reason thereof, and also by force of the statute in such case made and provided,

Assumpsit.

Indeb. assump.
for money lent
by the bank-
rupt.

Breach.

the said G. became chargeable to pay to the said H. V. the same sum of money, according to the tenor of the same note, and of the indorsement thereon. *And* being so chargeable, the said G. in consideration thereof, afterwards, and before the said H. V. became a bankrupt, to wit, the — day of — in the year of our Lord —, at W. aforesaid, undertook, and to the said H. V. then and there faithfully promised to pay to the said H. V. the same sum of money mentioned in the said note, according to the indorsement thereon, when afterwards he should be thereunto required. *And whereas* also the said G. afterwards, and before the said H. V. became a bankrupt, to wit, the said — day of — in the said year of our Lord —, at W. aforesaid, was indebted to the said H. V. in — of good and lawful money of *Great Britain*, for such a sum of money by the said H. V. to the said G. and at the special instance and request of the said G. before that time lent and accommodated; and being so indebted, the said G. in consideration thereof, afterwards, and before the said H. V. became a bankrupt, to wit, the day and year last mentioned, at W. aforesaid, undertook, and to the said H. V. then and there faithfully promised to pay to the said H. V. the said — last mentioned, when afterwards he should be thereunto required. *Nevertheless*, the said G. not regarding his said several promises and under-

undertakings aforesaid, in form aforesaid made, but contriving and fraudulently intending the said *A.* and *E.* in this behalf craftily and subtilly to deceive and defraud, hath not yet paid the said several sums of money or any part thereof to the said *H.* at any time before he the said *H.* became a bankrupt, or to the said *A.* and *E.* or either of them, at any time after the said *H.* became a bankrupt, (altho' the said *G.* afterwards, to wit, the said — day of — in the said year of our Lord —, and oftentimes afterwards, before he the said *H.* became a bankrupt, and after the said *H.* became a bankrupt, to wit, the — day of — in the year of our Lord 1734 and oftentimes as well before as after, by the said *A.* and *E.* at *W.* aforesaid, was thereunto required) but he hath hitherto altogether refused, and still doth refuse to pay or in any wise to content them or either of them for the same, to the damage of the said *A.* and *E.* 1201. And thereupon they bring suit, &c.

London, to wit, *W. B.* late of, &c. executor of the testament and last will of *R. B.* widow, deceased, was attached to answer *W. C.* in a plea of trespass on the case, &c.

Declaration in case Sur ass. against an executor. C. B.

And whereupon the said *W. C.* by *J. C.*

his attorney complaineth, *That whereas* after the 1st day of *May* which was in the year of our Lord 1705. to wit, on the — day of — in the year of our Lord —, the said *R.* in her life-time at *L.* to wit, at the parish of *St. Bridget*,

By the second indorsee of a promissory note drawn by the testatrix.

First indorsement.

Second indorsement.

otherwise *Bride's*, in the ward of *Farrington without*, made her certain note in writing, called a promissory note, subscribed with the proper hand and name of her the said *R.* bearing date the same day and year last aforesaid, and the same note so subscribed then and there, to wit, on the same day and year last above mentioned, at *L.* aforesaid in the parish and ward aforesaid, delivered to one *R. B.* by which note the said *R.* promised to pay to the same *R. B.* or order, 40 *l.* three months after date, for value in the same note mentioned to be received. *And* the said *R.* (to whom or to whose order the payment of the said money in the same note contained was appointed to be made) afterwards, and before the payment of the money in the said note contained, to wit, on the same — day of — in the said year of our Lord 1730. at *L.* aforesaid, in the parish and ward aforesaid, by a certain indorsement in writing, subscribed with the proper hand of the said *R.* and indorsed upon the same note, did assign the aforesaid note, and by that indorsement did appoint and order the contents of the aforesaid note to be paid to one *M. T.* or her order, for value in the same indorsement mentioned to be received. *And* the aforesaid *M.* (to whom or to whose order the payment of the said sum of money contained in the same note was by the same indorsement appointed to be made) afterwards, and before

before the payment of the money aforesaid contained in the said note, to wit, on the same — day of —, in the year of our Lord 1730. aforesaid, at *L.* aforesaid in the parish and ward aforesaid, by another indorsement in writing, subscribed with the proper hand of the said *M.* and indorsed upon the said note, did assign the same note, and by that indorsement did appoint and order the contents of the aforesaid note to be paid to the said *W. C.* according to the tenor of the aforesaid note. *Of which* said indorsements *Notice.* the said *R.* in her life-time afterwards, to wit, on the same — day of — in the year of our Lord 1730. aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, had notice by the said *W. C.* By reason of which said premisses, and also by force of the statute in that case lately made and provided, the aforesaid *R.* in her life-time was and became chargeable to pay to the said *W. C.* the said sum of 40*l.* in the said note contained, according to the tenor of the same note, and of the said two indorsements thereon made as aforesaid. *And* being so chargeable, &c. Assumpsit.

Middlesex, to wit, *J. G. Gent.* com- *Declaration in*
 plains of *J. B. Gent.* one of the attornies *case. Sur ass.*
 of the court of our lord the king, before *on a promissory*
 the king himself, being present here in *note by an in-*
 court in his proper person; *For that whereas* *dorsee, against*
 one *J. S.* after the 1st day of *May* in the *the indorser an*
 year of our Lord 1705. to wit, on the *attorney. B. R.*
 22d day of *December* in the year of our *Note made pay-*
 Lord *able to defen-*
dant or order.

Lord 1733. at *W.* in the county of *M.* aforesaid, made his certain note in writing, commonly called a promissory note, with his own proper hand thereto subscribed, bearing date the same day and year last mentioned; and the same note to the said *J. B.* did then and there deliver; by which said note the said *J. S.* promised to pay to the said *J. B.* by the name of Mr. *J. B.* or order, three months after date, 100 *l.* value received; and by reason thereof, and also by force of the statute in such case made and provided, the said *J. S.* became chargeable to pay to the said *J. B.* or his order, the same sum of money, according to the tenor of the said note. *And* the said *J. B.* after the making of the said note, and before the said sum of money or any part thereof was paid to him, to wit, the day and year last mentioned, at *W.* aforesaid indorsed the said note, with his own proper hand thereto subscribed, and thereby ordered the contents of the said note to be paid to the said *J. G.* or order, for value received; and for that purpose the said *J. B.* then and there delivered the said note to the said *J. G.* *And* the said *J. G.* avers, that after the indorsement and appointment so as aforesaid made, and after the expiration of the three months in the said note mentioned, to wit, the 24th day of *March* in the year last mentioned, at *W.* aforesaid, he the said *J. G.* did shew the said note and the said indorsement thereon

*He indorses it
to the plaintiff.*

*The drawer
refuses to pay
it.*

thereon to the said *J. S.* to pay the contents of the said note, to wit, the said 100 *l.* specified in the same, according to the tenor of the said note and indorsement; but the said *J. S.* did not pay, nor hath yet paid the same sum of money to the said *J. G.* but hath hitherto always refused, and still doth refuse to pay the same to the said *J. G.* Whereof the said *J. G.* afterwards, to wit, the same day and year last mentioned, at *W.* aforesaid, gave notice to the said *J. B.* And the said *J. G.* to whom or to whose order the payment of the said sum of money contained in the said note was to be made, hath made no order to any person of or concerning the said note, or the said sum of 100 *l.* mentioned in the same: By reason whereof, and also by force of the statute in such case made and provided, the said *J. B.* became chargeable to pay to the said *J. G.* the said 100 *l.* in the said note mentioned. And being so chargeable, the said *J. B.* in consideration thereof, afterwards, to wit, the same day and year last mentioned, at *W.* aforesaid, undertook, and to the said *J. G.* then and there faithfully promised to pay to the said *J. G.* the same sum of money, according to the force, form and effect of the same note.

Notice to defendant.

Plaintiff has not indorsed the note.

Assumpsit.

Middlesex, to wit, *J. R.* late of the parish of *St. Paul Covent-Garden*, Esq; was attached to answer *J. F. L.* of a plea of trespass upon the case, &c. And whereupon the said *J. F. L.* by *J. S.* his attorney complains,

Declaration in case Sur ass. C. B.

Indeb. ass.
for work, &c.
in the business
of a musician
at the play-
house.

Quantum me-
ritur thereon.

complains, *That whereas* the said *J. R.* on the 1st day of *August* in the year of our Lord 1742. at *W.* in the said county of *M.* was indebted to the said *J. F. L.* in the sum of 100 *l.* of good and lawful money of *Great Britain*, for certain work, labour, attendance and service of the said *J. F. L.* before that time done and performed by the said *J. F. L.* in his business of a musician, at the theatre royal in *Covent-Garden*, for the said *J. R.* at his special instance and request; and also for other work and labour done and performed by him the said *J. F. L.* for the said *J. R.* at his like instance and request; and being so indebted, he the said *J. R.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, undertook, and to the said *J. F. L.* then and there faithfully promised to pay him the said sum of money. *And whereas also* the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, in consideration that the said *J. F. L.* at the special instance and request of the said *J. R.* had before that time done and performed certain other work, labour, attendance and service in his business of a musician, at the theatre royal in *Covent-Garden* aforesaid; and also other work and labour for the said *J. R.* at his like instance and request undertook, and to the said *J. F. L.* then and there faithfully promised to pay to him so much money as

he

he the said *J. F. L.* had reasonably deserved to have from the said *J. R.* for the same. And the said *J. F. L.* doth aver, that he reasonably deserved to have from the said *J. R.* for the same, another sum of 100 *l.* of like lawful money, that is to say, at *W.* aforesaid, whereof the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, there had notice. *And whereas also* the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, was indebted to the said *J. F. L.* in the further sum of 100 *l.* of like lawful money of *Great Britain*, for certain work, labour, attendance and service of *I.* the wife of the said *J. F. L.* before that time done and performed by the said *I.* the wife of the said *J. F. L.* whilst she was the wife of the said *J. F. L.* in her business of an actress and singer at the theatre royal in *Covent-Garden* aforesaid; and also for other work, labour and service done and performed by her whilst she was the wife of the said *J. F. L.* for the said *J. R.* at his special instance and request; and being so indebted, he the said *J. R.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, undertook, and to the said *J. F. L.* then and there faithfully promised to pay to him the last mentioned sum of money. *And whereas also* the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid,

Indeb. ass.
for work, &c.
by plaintiff's
wife, in the
business of an
actress and
singer at the
play-house.

Quantum me-
ruit thereon.

said, in consideration that the said *J.* the wife of the said *J. F. L.* at the special instance and request of the said *J. R.* had before that time, whilst she was the wife of the said *J. F. L.* done and performed certain other work, labour, attendance and service, in her business of an actress and singer at the theatre royal in *Covent-Garden* aforesaid, and other work and labour for the said *J. R.* at his like instance and request undertook, and to the said *J. F. L.* then and there faithfully promised to pay him so much money as he had reasonably deserved to have from the said *J. R.* for the same: And the said *J. F. L.* doth aver, that he reasonably deserved to have from the said *J. R.* for the same another sum of 100 *l.* of like lawful money of *Great Britain*, that is to say, at *W.* aforesaid, whereof the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, there had notice *. *Nevertheless* the said *J. R.* not regarding his said several promises and undertakings so made as aforesaid, but

Breach.

* *Indeb. assumpsit* by baron and feme, for work done by the wife, *ad damnum ipsorum*, upon a special promise made to the wife only, the wife must be made a party to the action, but not on a promise implied by law; the law will not imply any promise made to the wife, she is servant to the husband, who was at the charge in providing materials, &c. to carry on the trade; therefore he ought to have the recompence, and therefore the law implies the promise was made to him only. Judgment *Quod nil capiat per billam.* Carth. 251.

contriving and fraudulently intending to deceive and defraud the said *J. F. L.* in this behalf, hath not paid to him the said several sums of money, or any of them, or any part thereof; although to pay the same to him the said *J. F. L.* he the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, was requested by the said *J. F. L.* but the said *J. R.* to pay the same to him hath hitherto altogether refused, and doth yet refuse, to the damage of the said *J. F. L.* of 150 *l.* And thereof he brings suit, &c.

London, to wit, *R. L.* late of, &c. was *Declaration in*
attached to answer unto *J. R.* in a plea of *case Sur as-*
trespass on the case, &c. *And whereupon* *sumpsit. C. B.*
the said *J.* by *L. R.* his attorney com-
plains, *That whereas* the said *R.* on the *Indeb. ass.*
— day of — in the year of our Lord *for meat,*
1734. at *L.* to wit, in the parish of *St. Mary le Bow* *drink, wash-*
in the ward of *Cheap*, was *ing and lodg-*
indebted unto the said *J.* in 12 *l.* for *ing, found for*
meat, drink, washing and lodging, by the *defendant's*
wife.
said *J.* before that time found and pro-
vided for one *H.* the wife of the said *R.*
at the special instance and request of the
said *R.* and being so indebted, he the said
R. in consideration thereof, afterwards, to
wit, the same day and year abovesaid, at
L. aforesaid, in the parish and ward afore-
said undertook, and then and there faith-
fully promised the said *J.* to pay him
the said sum of money, when he should
be afterwards thereunto requested. *And*
whereas

Quantum me-
ruit thereon.

whereas afterwards, to wit, the same day and year abovesaid, at *L.* abovesaid, in the parish and ward abovesaid, in consideration that the said *J.* had before that time found and provided other meat, drink, washing and lodging for the said *H.* the said wife of the said *R.* and at the like special instance and request of the said *R.* he the said *R.* undertook, and then and there faithfully promised the said *J.* to pay him so much money as he therefore reasonably deserved to have: And the said *J.* doth aver, that he therefore reasonably deserved to have of the said *R.* other 12 *l.* to wit, at *L.* abovesaid in the parish and ward abovesaid; whereof the said *R.* then and there had notice. *Tet,* &c.

Breach.

*Memorandum
of a bill against
an attorney.
C. B.*

Middlesex, to wit: *Be it remembered*, that on the — day of —, in this same term, came here into court *T. H.* by *S. G.* his attorney, and exhibited to the justices of our lord the king here his certain bill against *L. J.* one of the attornies of the court of our lord the king of the bench present here in court in his own proper person, of a plea of trespass on the case, which said bill follows in these words, to wit, *Easter term* in the 10th year of the reign of king *George II.* To the justices of our lord the king of the Common bench, *Middlesex*, to wit, *T. H.* by *J. G.* his attorney complains of *L. J.* one of the attornies of the court of the bench of our sovereign lord the king present here

*Bill in case
Sur assumpsit
against an at-
torney.*

here in court in his own proper person,
for that whereas the said *L.* the 1st day of *April* in the year of our Lord 1736. at *W.* in the said county of *M.* was indebted to the said *F.* in 60 *l.* of lawful money of *Great Britain*, for the use and occupation of a certain messuage, or tenement and garden, with the appurtenances of him the said *T.* lying and being at *H.* in the county aforesaid, before that time held, used and occupied by the said *L.* at his special instance and request from the said *T.* and by his permission; and being so indebted, the said *L.* afterwards, that is to say, the same day and year aforesaid, at *W.* aforesaid in the county aforesaid, in consideration thereof undertook, and then and there faithfully promised the said *T.* to pay him the said sum of money when he should be thereto required. *And also whereas* the said *L.* afterwards, that is to say, the same day and year aforesaid, at *W.* aforesaid in the county aforesaid, in consideration that the said *T.* at the like special instance and request of him the said *L.* had before that time permitted him the said *L.* to have and use a certain other messuage or tenement and garden, with the appurtenances of him the said *T.* lying and being in *H.* aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *T.* to pay him so much money as he should reasonably deserve to have for the same, when he should be

Indeb. aff. for
the use and oc-
cupation of a
messuage.

Quantum me-
ruit.

thereto required : And the said *T.* in fact faith, that he reasonably deserved to have for the same from the said *L.* other 60 *l.* of like lawful money, to wit, at *W.* aforesaid in the county aforesaid ; whereof the said *L.* afterwards, to wit, the same day and year aforesaid, at *W.* aforesaid in the county aforesaid had notice. *Tet, &c.*

*Declaration in
case Sur ass.
against the sur-
vivor, on a
joint promise.
C. B.*

Middlesex, to wit, *W. P.* late of the parish of *St. Clement Danes* in the county of *Middlesex*, vintner, was attached to answer *J. F.* and *T. G.* in a plea of trespass upon the case, *&c.* And whereupon the said *J.* and *T.* by *H. S.* their attorney complain, that *whereas* the said *W.* together with one *T. T.* lately deceased (whom the said *W.* survived) in the life of the said *T. T.* that is to say, on, *&c.* at, *&c.* were indebted to the said *J. F.* and *T. G.* in 100 *l.* of lawful money, *&c.* for so much money by the said *W. P.* and *T. T.* in the life-time of the said *T. T.* of the said *J. F.* and *T. G.* and to the use of the said *J. F.* and *T. G.* before that time had and received ; and being so indebted, the said *W. P.* and *T. T.* in consideration thereof, afterwards, that is to say, on the same day and year at, *&c.* undertook, and to the said *J. F.* and *T. G.* then and there faithfully promised that they the said *W. P.* and *T. T.* would well and faithfully pay and content the said 100 *l.* to the said *J. F.* and *T. G.* when they should be thereunto afterwards requested. *And whereas* also afterwards, that is to say, on the

*Indeb. ass.
for money had
and received.*

*Indeb. ass.
for money lent.*

the same day and year abovesaid at, &c. the said *W. P.* and *T. T.* in the life-time of the said *T. T.* were indebted [for money lent.] *Nevertheless* the said *W. P.* and *T. T.* in the life-time of the said *T. T.* and the said *W. P.* after the death of the said *T. T.* not regarding their said several promises and undertakings made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *J. F.* and *T. G.* in this behalf, have not paid, nor has either of them paid the said several sums of money to the said *J. F.* and *T. G.* or to either of them, (altho' so to do the said *W. P.* after the death of the said *T. T.* that is to say, on the 3d day, &c. at, &c. was requested by the said *J. F.* and *T. G.*) but they have wholly refused, and the said *W. P.* still refuses to pay the same to them, or any ways to content them for the same, to the damage of the said *J. F.* and *T. G.* of 100 l. And thereupon they bring suit, &c.

Serj. Pengelly.

London, to wit, *E. H.* late of, &c. and *T. T.* late of, &c. were attached to answer *Declaration in case Sur ass.*
J. B. G. C. and *W. C.* assignees of the debts, *by assignees of the goods of a bankrupt. C.B.*
 goods and chattels of *A. B.* and *B. R.* bankrupts, according to the form of the statute made and provided concerning bankrupts, in a plea of trespass on the case, &c. And whereupon the said *J. G.* and *W.* by *H. S.* their attorney complain, wherefore *whereas* *Indeb. ass.*
 the said *E.* and *T.* on the 30th day, &c. *for money had and received.*
 at, &c. were indebted to the said *J. G.*

Infimul com-
putassent.

Breach.

and *W.* as being assignees of the debts, goods and chattels of the said *A.* and *B.* bankrupts as aforesaid, in 50 *l.* of lawful money, &c. for so much money by the said *E.* and *T.* of the said *A.* and *B.* before that time had and received; and being so indebted, &c. undertook, and to the said *J. G.* and *W.* then and there faithfully promised that, &c. to the said *J. G.* and *W.* when, &c. would well and faithfully pay and content. *And whereas* also the said *E.* and *T.* afterwards, that is to say, on the same 30th day, &c. at, &c. accounted together with the said *J. G.* and *W.* being assignees, &c. as aforesaid, concerning divers sums of money to the said *J. G.* and *W.* as being assignees, &c. as aforesaid, before that time due, and then being in arrear and unpaid, and on the said account the said *E.* and *T.* then and there were found in arrear to the said *J. G.* and *W.* in 48 *l.* 16 *s.* 6 *d.* of like lawful money, &c. and being so found in arrear, &c. *Nevertheless* the said, &c. intending the said *J. G.* and *W.* in this behalf craftily, &c. or any part thereof, to the said *J. G.* and *W.* or to either of them, (altho' often requested) have not, nor has either of them paid, but have intirely refused and still do refuse to pay the said several sums of money to the said *J. G.* and *W.* or any ways content them for the same, to the damage of the said *J. G.* and *W.* of 50 *l.* And thereupon they bring suit, &c.

Serj. Pengelly.
Cumber-

Cumberland, ff. *W. F.* Gent. complains of *Declaration in*
W. W. in the custody of the marshal, &c. *For case* Sur aff.
that whereas on the 1st day of October in *for money won*
the year of our Lord 1737. at *P.* in the *at play.* B. R.
said county, it was agreed between the *Agreement.*
said *W. F.* and *W. W.* to play together at
a certain game with cards, called *hazard*,
for money upon tick; And thereupon the *Mutual pro-*
said *W. F.* at the special instance and re- *mises.*
quest of the said *W. W.* assumed upon
himself, and then and there faithfully
promised the said *W. W.* that he the said
W. F. would pay to the said *W. W.* all such
sums of money not exceeding in the whole
the sum of 10 l. as he the said *W. W.*
should win of the said *W. F.* at that play;
and in consideration thereof, the said *W. W.*
afterwards, to wit, on the same day and
year, at *P.* aforesaid, assumed upon him-
self, and then and there faithfully pro-
mised the said *W. F.* that he the said *W. W.*
would pay to the said *W. F.* all such sums
of money, not exceeding in the whole the
sum of 10 l. as he the said *W. F.* should
win of the said *W. W.* at that play. *And Averment.*
the said *W. F.* in fact says, that they the
said *W. F.* and *W. W.* in pursuance of the
said agreement, afterwards, to wit, on
the same day and year, at *P.* aforesaid,
played together at the said game called
hazard for money on tick, and the said
W. F. then and there at the said play did
win of the said *W. W.* several sums of
money, amounting in the whole to a lesser
sum of money than 10 l. to wit, the sum

Second count.

of 5 *l.* of lawful money of *Great Britain*,
And whereas afterwards, to wit, on the
 2d day of *October* in the year aforesaid,
 at *P.* aforesaid, it was agreed between the
 said *W. F.* and *W. W.* that they the said
W. F. and *W. W.* would play together at
 the said game for money upon tick; and
 thereupon the said *W. F.* at the special
 instance and request of the said *W. W.* as-
 sumed upon himself, and then and there
 faithfully promised the said *W. W.* that he
 the said *W. F.* would pay to the said *W. W.*
 all such sums of money as he the said
W. W. should win of the said *W. F.* at that
 play; and in consideration thereof, the
 said *W. W.* afterwards, to wit, on the same
 day and year, at *P.* aforesaid, assumed
 upon himself, and then and there faith-
 fully promised the said *W. F.* that he the
 said *W. W.* would pay to the said *W. F.*
 all such sums of money as he the said *W. F.*
 should win of the said *W. W.* at that play;
 And the said *W. F.* in fact says, that they
 the said *W. F.* and *W. W.* in pursuance of
 the said agreement in that respect, after-
 wards, to wit, on the same day and year
 aforesaid, at *P.* aforesaid, played together
 at the said game called *bazard* for money
 on tick, and the said *W. F.* then and there
 at that play did win of the said *W. W.*
 divers sums of money, amounting in the
 whole to the sum of 5 *l.* of lawful money
 of *G. B.* *And whereas* afterwards, to wit,
 on the 3d day of *October* in the year aforesaid,
 at *P.* aforesaid, it was agreed between the
 the

Third count.

the said *W. F.* and *W. W.* that they the said *W. F.* and *W. W.* would play together at a certain game with cards, commonly called *bankefalet*, otherwise *bankavalet*, for money on tick, and thereupon the said *W. F.* at the special instance and request of the said *W. W.* assumed upon himself, and then and there faithfully promised the said *W. W.* that he the said *W. F.* would pay to the said *W. W.* all such sums of money not exceeding in the whole the sum of 10 l. as he the said *W. W.* should win of the said *W. F.* at that play; and in consideration thereof, the said *W. W.* afterwards, to wit, on the same day and year, at *P.* aforesaid, assumed upon himself, and then and there faithfully promised the said *W. F.* that he the said *W. W.* would pay to the said *W. F.* all such sums of money not exceeding in the whole the sum of 10 l. as he the said *W. F.* should win of the said *W. W.* at that play: And the said *W. F.* in fact says, that they the said *W. F.* and *W. W.* in pursuance of the said agreement in that respect, afterwards, to wit, on the same day and year, at *P.* aforesaid, did play together at the said game commonly called *bankefalet*, otherwise *bankavalet*, for money on tick, and he the said *W. F.* then and there at that play did win of the said *W. W.* several sums of money, amounting in the whole to a lesser sum of money than the sum of 10 l. to wit, the sum of 5 l. &c. And whereas afterwards, to wit, *Fourth count.*

on the 5th day of *October* in the year
aforesaid, at *P.* aforesaid, it was agreed
between the said *W. F.* and *W. W.* that
they the said *W. F.* and *W. W.* would play
together at the said last mentioned game
for money upon tick, and thereupon the
said *W. F.* at the special instance and re-
quest of the said *W. W.* assumed upon
himself, and then and there faithfully
promised the said *W. W.* that he the said
W. F. would pay to the said *W. W.* all
such sums of money as he the said *W. W.*
should win of the said *W. F.* at that play;
and in consideration thereof the said *W. W.*
afterwards, to wit, on the same day and
year, at *P.* aforesaid, assumed upon him-
self, and then and there faithfully pro-
mised the said *W. F.* that he the said *W. W.*
would pay to the said *W. F.* all such sums
of money as he the said *W. F.* should win
of the said *W. W.* at the said last men-
tioned play: And the said *W. F.* in fact
says, that they the said *W. F.* and *W. W.*
in pursuance of the said agreement in that
respect, afterwards, to wit, on the same
day and year, played together at the said
last mentioned game for money on tick,
and that he the said *W. F.* at that play
did win of the said *W. W.* several sums of
money, amounting in the whole to the
sum of 5 *l.* &c. to wit, at *P.* aforesaid.

Indeb. ass. And whereas the said *W. W.* the same day
for money had and received, was indebted to the said *W. F.* in 5 *l.* of,
money lent, and money laid out. &c. for money by the said *W. W.* to the
use

use of the said *W. F.* before that time had and received, and also for other money by the said *W. F.* to the said *W. W.* and at his special instance and request before that time lent, and also for other money by the said *W. F.* for the aforesaid *W. W.* at his like instance and request before that time paid, laid out and expended; and thereupon being so indebted, the said *W. W.* in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at *P.* aforesaid, assumed upon himself, and to the said *W. F.* then and there faithfully promised that he the said *W. W.* the aforesaid sum of money last mentioned, to the said *W. F.* when afterwards he should be thereunto required, would well and faithfully pay: *Nevertheless*, the said *W. W.* *Breach.* not regarding his several promises and assumptions made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W. F.* in this respect, hath not paid to the said *W. F.* the said several sums of money, or any part thereof, (although the said *W. W.* afterwards, to wit, on the 6th day of *October* in the year aforesaid, at *P.* aforesaid, was requested by the said *W. F.* to pay him the same) but has hitherto wholly refused, and still refuses to pay the same to the said *W. F.* to the damage of the said *W. F.* of 10*l.* And thereupon he brings suit, &c. Pledges, &c.

Hun.

*Declaration in
case Sur aff.
against an exe-
cutor, for mo-
ney had and
received of
and for the
plaintiffs and
to their use.*

3 D. A. 393,
p. 13. S. C.
3 Lev. 57.
S. C.
Tr. 33 Car. 2.
Ro. 1097,
1098, 1099.

Breach.

Huntingdonshire, to wit, H. R. late of H.
in the county aforesaid innholder, exe-
cutor of the testament of *T. W.* was at-
tached to answer *T. L. J. H.* and *E. C.*
of a plea of trespass on the case, &c. And
whereupon the said *T. L. J.* and *E.* by
R. C. their attorney complain, Wherefore
whereas the said *T. W.* in his life-time, to
wit, on the 5th day of *October* in the 32d
year of the reign of our sovereign lord
Charles II. now king of *England*, &c. at
H. was indebted to the said *T. L. J.* and *E.*
in 100 l. of lawful money of *England*, as
well for money by the said *T. W.* in his
life-time before that time had and received
of the said *T. L. J.* and *E.* as for money
by the said *T. W.* in his life-time before
that time had and received for the same
T. L. J. and *E.* to the proper use of the
said *T. L. J.* and *E.* and the said *T. W.*
being so thereupon indebted, the said *T. W.*
in his life-time afterwards, to wit, on the
same day and year at *H.* aforesaid, in
consideration thereof undertook, and to
the said *T. L. J.* and *E.* then and there
faithfully promised that he the said *T. W.*
would well and truly pay and content the
said 100 l. to the said *T. L. J.* and *E.*
when he should be thereunto afterwards
requested. Yet the said *T. W.* in his life-
time, and the said *H.* after the death of
the said *T. W.* not minding his said pro-
mise and undertaking, but contriving and
fraudulently intending craftily and subrilly
to

to deceive and defraud the said *T. L. J.* and *E.* in this behalf, have not paid or in any manner satisfied, nor has either of them paid or in any manner satisfied the said 100 *l.* or any part thereof, to the said *T. L. J.* and *E.* Altho' afterwards the said *T. L.* in his life-time, to wit, on the 10th day of *November* in the 32d year aforesaid, and the said *H.* after the death of the said *T. W.* to wit, on the 7th day of *December* in the 32d year aforesaid, at *H.* aforesaid, were thereunto severally requested by the said *T. L. J.* and *E.* but they intirely refused to pay them the same, and the said *H.* still refuses to pay them the same, to the damage of the said *T. L. J.* and *E.* of of 120 *l.* And thereupon they bring suit, &c.

And the said *H.* by *G. M.* his attorney *Plac.* comes and defends the force and injury when, &c. and says that the said *T. L. J. H.* and *E. C.* ought not to have their said action against him, &c. Because he says that the said *T. W.* in his life-time, to wit, on the 6th day of *September* in the 32d year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. at *H.* aforesaid, by his certain writing obligatory acknowledged himself to be bound to one *D. H.* in 40 *l.* to be paid to the said *D. H.* when he should be thereunto requested; which said writing was made by the said *T. W.* to the said *D. H.* for a true and just debt, and which at the time of the death of the said *T. W.* was no ways paid

A bond entered into by the testator.

*Defendant im-
pleaded there-
on.*

paid or satisfied by the said *T. W.* to the said *D. H.* Whereby the said *D. H.* after the death of the said *T. W.* (the said debt not being satisfied) to wit, in the term of the *Holy Trinity* in the 33d year of the reign of our lord the now king, in the court of our lord the king before Sir *Francis North*, Knt. and his companions, then justices of the said lord the king of the bench here, to wit, at *W.* impleaded the said *H.* of and for the said 40 *l.* then and yet unpaid, by the writ of our said lord the king, of debt returnable and returned in the said court; in which said plea the said parties appearing in the same court, the said *D. H.* by *R. C.* then his attorney said, that whereas the said *T.* in his life-time, on the 6th day of *September* in the 33d year of the reign of our sovereign lord *Charles II.* now king of *England, &c.* at *H.* aforesaid, by his certain writing obligatory acknowledged himself to be bound to the said *D. H.* in the said 40 *l.* to be paid to the said *D. H.* when he should be thereunto requested; yet the said *T.* in his life-time, and the said *H. F.* after the death of the said *T. W.* altho' often required, had not rendered the said 40 *l.* to the said *D. H.* but had intirely refused to render the same to him, and the said *H. F.* then refused to render the same to the said *D. H.* and unjustly detained; wherefore he then said that he was injured, and had damage to the value of 40 *l.* and thereupon he brought suit, &c. And he then brought here into court the
said

said writing, which testified the said debt
 in form aforesaid, the date whereof was
 on the day and year aforesaid, &c. And
 the said H. by G. M. his attorney came
 and defended the force and injury when,
 &c. and the same attorney then said that
 he was not informed by the same H. F. *And judgment
against him by
Non infor-
matus.*
 his master of any answer to be given in
 the said plaint for the said H. F. to the
 said D. H. and he said nothing else there-
 upon; whereby the said D. H. remained
 thereupon undefended against the said
 H. F. Therefore it was considered by the
 same court, that the said D. H. should re-
 cover against the said H. F. his said debt
 and his damages, by the occasion of the
 detaining that debt, to 40 s. adjudged by
 the court here to the said D. H. by his as-
 sent to be levied of the goods and chattels
 which were the said T. W.'s at the time of
 his death in the hands of the said T. to be
 administred, if he had so much in his hands
 to be administred, and if he had not, then
 the said damages to be levied of the proper
 goods and chattels of the said H. and that
 the said H. F. should then be in mercy, &c.
 as by the record and process thereupon
 remaining in the same court of our said
 lord the king here plainly appears: Which
 said judgment so as aforesaid obtained,
 was obtained for a true and just debt, and
 still remains in its full force and effect,
 no ways reversed or annulled; and the
 said debt and damages still remain in ar-
 rear unpaid to the said D. *Another bond
entered into by
the testator.*
 And the said
 H. F.

H. F. further says, that the said *T. W.* in his life-time, to wit, on the said 6th day of *September* in the 32d year of the reign of our said lord the present king, at *H.* aforesaid, by his certain other writing obligatory acknowledged himself to be bound to said the *D. H.* in other 40 *l.* to be paid to the said *D. H.* when he should be thereunto required; which said writing obligatory last mentioned was also made by the said *T.* to the said *D. H.* for another true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* and the same writing obligatory still remains in its full force and effect; and the said debt at the time of the death of the said *T. W.* was in arrear, and still is in arrear unpaid to the said

Another bond entered into by the testator.

D. H. And the said *H. F.* further says, that the said *T. W.* in his life-time, to wit, on the said 6th day of *September* in the said 32d year of the reign of our said lord the present king, at the town of *H.* aforesaid, by his certain other writing obligatory acknowledged himself to be bound to the said *D. H.* in other 40 *l.* of lawful money of *England*, to be paid to the said *D.* when he should be thereunto required; which said writing obligatory last mentioned was also made by the said *T.* to the said *D.* for another true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* and

the same writing obligatory still remains in its full force and effect; and that debt at the time of the death of the said *T. W.* was in arrear, and still is in arrear unpaid to the said *D. H.* And the said *H. F.* fur-

Another bond entered into by the testator.

ther says, that the said *T. W.* in his life-time, to wit, on the said 6th day of *September* in the said 32d year of the reign of our said lord the present king, at *H.* aforesaid, by his certain other writing obligatory acknowledged himself to be bound to the same *D. H.* in other 40 *l.* of like lawful money of *England*, to be paid to the same *D. H.* when he should be thereunto required; which said writing obligatory last mentioned was also made by the said *T. W.* in his life-time to the said *D. H.* for another true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* and the same writing obligatory still remains in its full force and effect, and that debt at the time of the death of the said *T. W.* was in arrear, and still is in arrear unpaid to the said *D. H.* And the said *H. F.*

further says, that the right honourable *E.* Earl of *S.* on the 25th day of *March* in the year of our Lord 1677. at the town of *H.* in the county aforesaid, demised to the said *T. W.* in his life-time one messuage called the priory-house, one dove-house, one close of pasture called the priory-close, one other close of pasture called *Jeas Grove*, one other close of pasture

Rent due by testator on a lease parol.

sture called *Straughton's Grove*, one other close called *Middle St. Herbert's*, and three other closes of pasture called the *Infield closes*, with the appurtenances, within the parish of *St. Mary* in the town of *H.* aforesaid; To have and occupy the said tenements to the said *T. W.* from the said 25th day of *March* in the year of our Lord 1677. aforesaid, until the end and term of one whole year thence next ensuing, and fully to be complete and ended, and so from year to year, so long as it should please both the said parties: Rendering therefore yearly, so long as the said *T. W.* should hold and occupy the said tenements with the appurtenances, by virtue of the said demise, to the said earl and his assigns 56 *l.* of lawful money of *England*, to be paid at the feasts of *St. Michael* the archangel, and the annunciation of the blessed virgin *Mary*, by equal portions; by virtue of which said demise the said *T.* in his life-time, on the 26th day of *March* in the year of our Lord 1677. aforesaid, entered into the said tenements with the appurtenances, and was possessed thereof and occupied the said tenements by the space of three years and the half of one year thence next ensuing, and 56 *l.* of the rent aforesaid at the feast of *St. Michael* the archangel last past for one whole year then ended, were in arrear unpaid by the said *T. W.* in his life-time to the said earl; which said 56 *l.* for the rent aforesaid, so as aforesaid due, were a true
 2 and

and just debt, and at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said earl; Whereby the said earl, after the death of the said *T. W.* (the same debt *Defendant impleaded there-* not being satisfied) to wit, in the term *on.* of the *Holy Trinity* in the 33d year of the reign of our lord the present king, in the court of our said lord the king before Sir *Francis North*, Knt. and his companions, then justices of our said lord the king of the bench here, to wit, at *W.* impleaded the said *H. F.* after the death of the said *T. W.* of and for the said 56 *l.* then and still unpaid, by the writ of our said lord the king of debt returnable and returned in the same court; in which said plea the said parties appearing in the same court, the said earl by *J. R.* his attorney then said, that he the same earl on the 25th day of *March* in the year of our Lord 1677. at *H.* aforesaid, had demised to the said *T. W.* in his life-time one messuage called the priory-house, one dove-house, one close of pasture called the priory-close, one other close of pasture called *Jeas Grove*, one other close of pasture called *Straughton's Grove*, one other close of pasture called *Middle St. Herbert's*, and three other closes of pasture called the *Infield closes*, with the appurtenances, within the parish of *St. Mary* in *H.* aforesaid; To hold and occupy to the said *T. W.* from the said 25th day of *March* in the year of our Lord 1677. aforesaid, unto the full end

Vol. II. K and

and term of one whole year thence next ensuing and fully to be complete and ended, and so from year to year so long as it should please both the said parties; rendering therefore yearly, so long as the said *T. W.* should occupy the said tenements with the appurtenances, to the said earl and his assigns 56 *l.* of lawful money of *England*, to be paid at the feast of *St. Michael* the archangel, and the annunciation of the blessed virgin *Mary*, by equal portions: By virtue of which said demise the said *T. W.* entered into the said tenements with the appurtenances, and was possessed thereof and occupied the same tenements by the space of three years and the half of one year, and 56 *l.* of the rent aforesaid were in arrear unpaid by the said *T. W.* to the said earl at the feast of *St. Michael* the archangel last past, for one whole year then ended, whereby an action accrued to the said earl to demand and have of the said *T. W.* in his life-time the said 56 *l.* Yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* altho' often requested, had not then rendered, nor had either of them rendered the said 56 *l.* but they had to that time refused to render the same to him, and the said *H.* then refused to render the same to him, and unjustly detained the same: Whereupon he then said that he was injured, and had damages to the value of 40 *l.* And thereupon he then brought suit. And the said

H. F.

H. F. by *G. M.* his attorney came and defended the force and injury when, &c. and the same attorney then said that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H.* to the said earl, and said nothing else thereupon; whereby the said earl remained thereupon undefended against the said *H. F.* Therefore it was then considered by the said court, that the said earl should recover against the said *H. F.* his said debt, and his damages by occasion of the detaining that debt to 40 s. adjudged by the court here to the said earl, by his assent to be levied on the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administred, if he had so much in his hands to be administred; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should then be in mercy, &c. as by the record and proceedings thereupon remaining in the court of our said lord the king here may more fully appear: Which said judgment so as aforesaid obtained, was also obtained for a true and just debt, and still remains in its full force and effect, no way reversed or annulled; and the said debt and damages still remain in arrear unpaid to the said earl. And the said *H. F.* further says, that the said *T. W.* in his lifetime, to wit, on the 4th day of December

*And judgment
against him by
Non sum in-
formatus.*

*Testator in-
debted upon an
Insimul com-
putasset.*

*Defendant
impleaded
thereon.*

in the 30th year of the reign of our said lord the present king, at *H.* aforesaid, accounted together with one *D. W.* Gent. of divers sums of money before due and unpaid by the said *T. W.* to the said *D. W.* and upon that accounting the said *T. W.* in his life-time was found in arrearage to the said *D. W.* in 96 *l.* of lawful money of *England*; and the said *T. W.* in his life-time afterwards satisfied the said *D. W.* of 54 *l.* 6 *s.* and 8 *d.* thereof, and 41 *l.* 13 *s.* and 4 *d.* the residue of the said 96 *l.* were a true and just debt of the said *T. W.* at the time of his death, and no ways paid or satisfied by the said *T. W.* to the said *D. W.* at the time of the death of the said *T. W.* Whereby the said *D. W.* after the death of the said *T. W.* (the same residue of the said debt not being satisfied) to wit, in the term of the *Holy Trinity* in the 33d year of the reign of our said lord the king, in the court of our said lord the king before Sir *Francis North*, Knt. and his companions, then justices of our said lord the king of the bench here, to wit, at *W.* aforesaid, impleaded the said *H. F.* of and for the said 41 *l.* 13 *s.* and 4 *d.* residue of the said 96 *l.* by the writ of our said lord the king, of debt returnable and returned in the same court: In which said plea the said parties appearing in the same court, the said *D. W.* by *J. R.* his attorney said, that whereas the said *T. W.* in his life-time, to wit, on the said 4th day of *December* in the said 30th year of the

the reign of our said lord the present king, accounted together with the said *D. W.* of divers sums of money before due and unpaid by the said *T. W.* to the said *D. W.* and upon that accounting the said *T. W.* in his life-time was found in arrear to the said *D. W.* in 96 *l.* of lawful money of *England*, whereby an action accrued to the said *D. W.* to demand and have of the said *T. W.* in his life-time the said 96 *l.* and the said *T. W.* in his life-time afterwards satisfied to the said *D. W.* 54 *l.* 6 *s.* and 8 *d.* thereof: Yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* altho' often requested, have not rendered, nor has either of them rendered the said 41 *l.* 13 *s.* and 4 *d.* residue of the said 96 *l.* to the said *D. W.* but they had to that time refused, and the said *H. F.* then refused to render the same to him, and unjustly detained: Wherefore he said that he was injured, and had damage to the value of 40 *l.* And thereupon he then brought suit, &c. And the said *H. F.* by *G. M.* his attorney came and defended the force and injury when, &c. and said that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *D. W.* and he said nothing else thereupon; whereby the said *D. W.* remained thereupon undefended against the said *H. F.* It was therefore considered that the said *D. W.* should recover against the said

*And judgment
against him by
Non sum in-
formatus.*

H. F. his said debt, and his damages by the occasion of the detaining of that debt to 50 s. adjudged by the court here to the said *D.* by his assent to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administred, if he had so much thereof in his hands, to be administred; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should be in mercy, &c. as by the record and proceedings thereupon remaining in the same court of our said lord the king here more fully appears: Which said judgment so as aforesaid obtained, was also obtained for a true and just debt, and still remains in its full force and effect, no ways reversed or annulled, and the said debt and damages are still in arrear unpaid to the said *D. W.* And the said *H. F.* further says that the said *T. W.* in his life-time, to wit, on the 2d day of November in the 32d year of the reign of our said lord *Charles II.* now king of *England*, &c. at the town of *H.* accounted together with one *H. A.* of divers sums of money before due and unpaid by the said *T. W.* to the said *H. A.* and upon that accounting the said *T. W.* in his life-time was found in arrear to the said *H. A.* in 43 l. 18 s. and 4 d. to be paid to the said *H. A.* when he should be thereunto afterwards requested; which said 43 l. 18 s. and 4 d. so as aforesaid found in arrear upon

Testator indebted on an Infimus computasset.

upon the said accounting, were a true and just debt, and were no ways paid or satisfied by the said *T. W.* to the said *H. A.* at the time of the death of the said *T. W.*

Whereby the said *H. A.* after the death of the said *T. W.* (the same debt not being satisfied) to wit, in *Easter* term in the 33d year of the reign of our said lord the present king, in the court of the said lord the king before Sir *Francis North*, Knt. and his companions, then justices of our said lord the king of the bench here, to wit, at *W.* impleaded the said *H. F.* of and for the said 43 *l.* 18 *s.* and 4 *d.* by the writ of our said lord the king of debt returnable and returned in the same court: In which said plea the said parties appearing in the same court, the said *H. A.* by *J. R.* his attorney said, that whereas the said *T. W.* in his life-time, to wit, on the 2d day of *November* in the 32d year of the reign of our sovereign lord *Charles* the Second, now king of *England*, &c. at the town of *H.* accounted together with the said *H. A.* of divers sums of money before due and unpaid by the said *T. W.* to the said *H. A.* and upon that accounting the said *T. W.* in his life-time was found in arrear to the said *H. A.* in the said 43 *l.* 18 *s.* and 4 *d.* to be paid to the said *H.* when he should be afterwards thereunto requested; whereby an action accrued to the said *H. A.* to demand and have of the said *T. W.* in his life-time the said 43 *l.* 18 *s.* and 4 *d.* yet the said *T. W.*

Defendant impleaded thereon.

*Judgment a-
gainst him by
Non sum in-
formatus.*

in his life-time, and the said *H. F.* after the death of the said *T. W.* altho' often requested, had not rendered, nor had either of them rendered the said 43 *l.* 18 *s.* and 4 *d.* to the said *H. A.* but they had to that time refused, and the said *H. F.* then refused to render the same to him, and unjustly detained: Whereupon he then said that he was injured, and had damage to the value of 40 *l.* And thereupon he then brought suit, &c. And the said *H. F.* by *G. M.* his attorney came and defended the force and injury when, &c. and the same attorney said that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *H. A.* and he said nothing else thereupon; whereby the said *H. A.* remained thereupon undefended against the said *H. F.* Therefore it was considered that the said *H. A.* should recover against the said *H. F.* his said debt, and his damages by occasion of the detaining that debt to 40 *s.* adjudged by the court here to the said *H. A.* by his assent to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administred, if he had so much thereof in his hands to be administred; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should be in mercy, &c. as by the record and proceedings thereupon remain-
ing

ing in the said court of our said lord the king here more fully appears; which said judgment so as aforesaid obtained, was obtained for a true and just debt, and still remains in its full force and effect, no ways reversed or annulled, and the said debt and damages still remain in arrear unpaid to the said *H. A.* And the said *H. F.* further says, that one *J. F. Gent.* on the 20th day of *April* in the year of our Lord 1677. at *H.* aforesaid, demised to the said *T. W.* a close of land called the back-yard with the appurtenances, adjoining to a certain messuage then in the occupation of the said *T. W.* within the parish of *St. Mary* in the town of *H.* aforesaid; To hold and occupy to the said *T. W.* from the feast of the annunciation of the blessed virgin *Mary* then last past, unto the end and term of ten years thence next ensuing, and fully to be complete and ended: Rendering therefore yearly during the said term to the said *J. F.* and his assigns 5 *l.* of lawful money of *England*, to be paid at the feasts of *St. Michael* the archangel and the annunciation of the blessed virgin *Mary*, by equal portions; by virtue of which demise the said *T. W.* in his life-time entered into the said close with the appurtenances, and was possessed thereof, and 5 *l.* of the said rent was in arrear unpaid by the said *T. W.* to the said *J.* at the feast of *St. Michael* the archangel last past, for one whole year then ended; which said 5 *l.* for the said rent
so

*Rent due by
testator on a
lease.*

Defendant im-
pleaded there-
on.

for as aforesaid due, were his true and just debt, and which was no ways paid or satisfied by the said *T. W.* to the said *J.* at the time of the death of the said *T. W.* Whereby the said *J. F.* after the death of the said *T.* (the said debt not being satisfied) to wit, in the term of the *Holy Trinity* in the 33d year of the reign of our sovereign lord the present king, in the court of our said lord the king before Sir *Francis North*, Knt. and his companions, then justices of our said lord the king of the bench here, to wit, at *W.* impleaded the said *H. F.* after the death of the said *T. W.* of and for the said *5 l.* then and yet unpaid, by the writ of our lord the king of debt returnable and returned in the same court: In which said plea the said parties appearing in the same court, the said *J. F.* by *J. R.* his attorney said, that whereas the said *J. F.* on the 20th day of *April* in the year of our Lord 1678. aforesaid, at *H.* aforesaid, had demised to the said *T. W.* one close of land called the back-yard with the appurtenances, adjoining to a certain messuage then in the occupation of the said *T. W.* within the parish of *St. Mary* in *H.* To hold and occupy to the said *T. W.* from the feast of the annunciation of the blessed virgin *Mary* then last past, unto the end and term of ten years thence next ensuing, and fully to be complete and ended: Rendering therefore yearly during the said term, to the said *J. F.* and his assigns, *5 l.* of lawful money

money of *England*, to be paid at the feasts of *St. Michael* the archangel and the annunciation of the blessed virgin *Mary*, by equal portions; by virtue of which said demise the said *T. W.* in his life-time entered into the said close with the appurtenances, and was possessed thereof, and 5 *l.* of the said rent were in arrear unpaid by the said *T. W.* in his life-time to the said *J. F.* at the feast of *St. Michael* the archangel last past, for one whole year then ended; whereby an action accrued to the said *J. F.* to demand and have of the said *T. W.* in his life-time the said 5 *l.* Yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* altho' often requested, had not then rendered, nor had either of them rendered the said 5 *l.* to the said *J. F.* but they had to that time refused, and the said *H. F.* then refused to render the same to him, and unjustly detained: Wherefore he said that he was injured, and had damage to the value of 40 *s.* And thereupon he then brought suit, &c. And judgment the said *H. F.* by *G. M.* his attorney came against him by and defended the force and injury when, Non sum informatus. and the said attorney then said, that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *J. F.* and he said nothing else thereupon; whereby the said *J. F.* remained thereupon undefended against the said *H. F.* Therefore it was considered by the said

said court, that the said *J. F.* should recover against the said *H. F.* his said debt, and his damages by occasion of the detaining that debt, to 40 s. adjudged by the court here to the said *J. F.* by his assent to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administred, if he had so much thereof in his hands to be administred; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should then be in mercy, &c. as by the record and proceedings thereon remaining in the said court of our said lord the king here more fully may appear: Which said judgment so as aforesaid obtained, was obtained for a true and just debt, and which still remains in its full force and effect, no ways reversed or annulled, and the said debt and damages still remain in arrear unpaid to the said *J. F.* And the said *H. F.* further says, that the said *T. W.* in his life-time, to wit, on the 9th day of *November* in the 32d year of the reign of our said lord the now king, at *H.* aforesaid, was indebted to the said *J. F.* in 36 l. 7 s. and 3 d. of lawful money of *England*, for divers wares and merchandizes of the said *J. F.* before that time bargained and sold to the said *T. W.* which said 36 l. 7 s. and 3 d. were the true and just debt of the said *T. W.* at the time of his death, and were no ways

Testator indebted for goods sold.

ways paid or satisfied by the said *T. W.* to the said *J. F.* at the time of the death of the said *T. W.* *Whereby* the said *J. F.* *Defendant impleaded thereon.* after the death of the said *T.* (the same debt not being satisfied) to wit, in the term of the *Holy Trinity* in the 33d year of the reign of our sovereign lord the present king, in the court of our said lord the king before Sir *Francis North*, Knt. and his companions, then justices of our said lord the king of the bench here, to wit, at *W.* aforesaid, impleaded the said *H. F.* of and for the said 36 *l.* 7 *s.* and 3 *d.* by the writ of our said lord the king, of debt returnable and returned in the same court; in which said plea the said parties appearing in the same court, the said *J. F.* by *J. R.* his attorney said, that whereas the said *T. W.* in his life-time, to wit, on the 9th day of *November* in the 32d year of the reign of our sovereign lord the present king, at *H.* aforesaid, had bought of the said *J. F.* eighty-six dozen and five pounds of candles for 21 *l.* and 10 *s.* ten dozen of soap for 40 *s.* and 3 *d.* fourteen pounds of tobacco for 25 *s.* two chaldron of coals for 38 *s.* and 4 *d.* three pints of brandy for 3 *s.* and 8 *d.* four quarts of vinegar for 26 *s.* and five pounds of sugar for 2 *s.* and 9 *d.* fifteen pounds of new raisins for 5 *s.* and 9 *d.* fifteen pounds of currans for 7 *s.* and 8 *d.* seven pounds of prunes for 1 *s.* and 2 *d.* six dozen of trenchers for 6 *s.* five hundred of tyles for 12 *s.* and 7 *d.* five hundred

dred of bricks for 9 s. and 8 d. one chaldron and forty-two bushels of lime for 26 s. and 10 d. six planks for 1 s. one clock-line for 1 s. and 3 d. two dozen and five bottles for 10 s. and 8 d. three dozen of corks for 1 s. one barrel of mum for 55 s. three gross and half a gross of tobacco-pipes for 4 s. and 8 d. six stone and half a stone and forty-three pounds weight of whiting for 11 s. and 2 d. one hundred of laths and reeds for 3 s. and 10 d. two fir-poles for 3 s. to be paid to the said J. F. when he should be thereunto requested; which said several sums of money in the whole amount to 36 l. 7 s. and 3 d. Yet the said T. W. in his life-time, and the said H. F. after the death of the said T. W. altho' often requested, had not then rendered, nor had either of them rendered the said 36 l. 7 s. and 3 d. to the said J. F. but had to that time refused, and the said H. F. then refused to render the same to him, and unjustly detained: Wherefore he then said that he was injured, and had damage to the value of 40 l. And thereupon he then brought suit, &c. And the said H. F. by G. M. his attorney came and defended the force and injury when, &c. and the said attorney then said, that he was not informed by the said H. F. his master of any answer to be given in the said plaint for the said H. F. to the said J. F. and he said nothing else thereupon; whereby the said J. F. remained there-

*And judgment
against him by
Non sum in-
formatus.*

upon undefended against the said *H. F.* Therefore it was considered by the said court, that the said *J. F.* should recover against the said *H. F.* his said debt, and his damages by the occasion of the detaining that debt, to 40 s. adjudged by the court here to the said *J. F.* by his assent to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administred, if he had so much thereof in his hands to be administred; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should be in mercy, &c. as by the record and proceedings thereon remaining in the same court of our said lord the king here more fully appears: Which said judgment so as aforesaid obtained, was obtained for a true and just debt, and still remains in its full force and effect, no ways reversed or annulled; and the said debt and damages still remain in arrears unpaid to the said *J. F.* And the said *H. F.* further says, that the said *T. W.* in his life-time, to wit, on the 30th day of *August* in the said 32d year of the reign of our sovereign lord the present king, at *H.* aforesaid, was indebted to one *W. A.* in 78 l. of lawful money of *England*, for divers wares and merchandizes of the said *W. A.* before that time bargained and sold to the said *T. W.* in his life-time; which said 78 l. were the true and just debt of the

Testator indebted for goods bought.

*Defendant im-
pleaded thereon
in B. R.*

the said *T. W.* at the time of his death, and were no ways paid or satisfied by the said *T. W.* to the said *W. A.* at the time of the death of the said *T. W.* Whereby the said *W. A.* after the death of the said *T. W.* (the said debt not being satisfied) to wit, in the term of the *Holy Trinity* in the 33d year aforesaid, in the court of our said lord the king, before the king himself then being at *W.* aforesaid, impleaded the said *H. F.* of and for the said 78 *l.* by his certain bill against the said *H. F.* in the custody of the marshal, &c. of a plea of debt, and there were then pledges of prosecuting, to wit, *J. D.* and *R. R.* by which said bill the said *W. A.* complained against the said *H. F.* executor of the testament of the said *T. W.* deceased, in the custody of the marshal of the *Marshalsea* of our Lord the king, before the king himself, of a plea that he render to him 78 *l.* of lawful money of *England*, which he unjustly detained from him, for that, to wit, that whereas the said *T. W.* in his life-time, to wit, on the 30th day of *August* in the 32d year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, had bought of the said *W.* two pipes of *Canary* for 78 *l.* to be paid to the said *W.* when he should be thereunto requested; yet the said *T.* in his life-time, and the said *H. F.* after the death of the said *T. W.* altho' often requested,

requested, had not, nor had either of them then paid the said 78 l. to the said *W. A.* but had to that time refused, and the said *H. F.* then refused to pay him the same, to the damage of the said *W. A.* of 5 l. And thereupon he then brought suit, &c. And the said *H. F.* by *J. N.* *And judgment against him by* then his attorney came and said, that he *Non potest* could not deny the said action of the said *W. A.* nor but that he detained from the *dedicere actionem.* the said *W. A.* the said 78 l. in the said declaration above-mentioned, in manner and form as the said *W. A.* above declared against him: Therefore it was considered, that the said *W. A.* recover against the said *H.* his said debt, and his damages which he sustained, as well by occasion of the detaining that debt, as for his costs and charges by him about his suit in this behalf expended, adjudged to the said *W. A.* by his assent to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administered, if he had then so much thereof in his hands; and if he had not so much thereof in his hands, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should be in mercy, &c. as by the record and proceedings thereon now remaining in the said court of our said lord the present king, before the king himself at *W.* aforesaid, more fully appears: Which said judgment so as aforesaid obtained, was also obtained

Plene admini-
stravit præter,
&c.

for a true and just debt, and which still remains in its full force and effect, no ways reversed or annulled; and the debt and damages aforesaid are still in arrear unpaid to the said *W. A.* And the said *H. F.* further says, that he has fully administered all the goods and chattels which were of the said *T. W.* at the time of his death; and that he has no goods or chattels which were of the said *T. W.* at the time of his death in his hands to be administered, nor had he on the day of suing out the original writ of the said *T. L. J. H.* and *E. C.* nor at any time afterwards, except goods and chattels to the value of 100 s. which are bound and liable to the executions of the said several judgments, and to the payment of the said several sums by the said writings as aforesaid due and unpaid; And this he is ready to verify: Wherefore he prays judgment, if the said *T. L. J. H.* and *E. C.* ought to have their said action against him, &c.

Replication,
that one of the
writings obli-
gatory was
conditioned for
the payment of
a less sum at
a day yet to
come.

And the said *T. L. J.* and *E.* say, that they by any thing before alledged ought not to be barred from having their said action, because they say that one writing obligatory of the said three writings obligatory of 40 l. above pleaded in bar, made to the said *D. H.* by the said *T. W.* in his life-time as aforesaid, upon which judgment is not yet obtained by the said *D.* to wit, the writing obligatory of the three writings obligatory above secondly mentioned, was made and conditioned by

by a condition to the same writing obligatory subscribed, for the true and certain payment of the full and just sum of 20 l. and 18 s. of good and lawful money of *England*, to the said *D. H.* his executors, administrators or assigns, upon the 24th day of *June* then and now next ensuing, that then the said writing obligatory should be void; And this they are ready to verify: Wherefore they pray judgment, and their damages by occasion of the premisses to be adjudged to them.

And the said *H.* says, that the plea by *Demurrer.*
the said *T. J.* and *E.* in manner and form above pleaded by replying, and the matter therein contained, are not sufficient in law to maintain the action of the said *T. J.* and *E.* against the said *H. F.* To which the said *H. F.* has no need, and is not bound by the law of the land in any manner to answer; And this he is ready to verify: Wherefore, for default of a sufficient replication in this behalf, the said *H. F.* demurs in law, and as before prays judgment, and that the said *T. L. J.* and *E.* may be barred from having their said action against him the said *H. F.* &c.

And for causes of demurring in law upon *Causes of De-*
the said plea, the said *H.* according to *murrer.*
the form of the statute in such case lately made and provided declares, and to the court here shews the following causes, to wit: For that the said *T. L. J.* and *E.* by their said replication have not answered any thing as to two writings obligatory of

the said three writings obligatory above pleaded in bar, nor as to the said several judgments so as aforesaid pleaded in the said bar of the said *H. F.* as by the law of the land the said *T. J.* and *E.* ought by replying to have alledged; and also for that, that the said *T. L. J.* and *E.* by their said replication do not sufficiently answer to the said plea of the said *H.* nor do they confess and avoid, nor traverse or deny the matter in the bar of the said *H.* so as aforesaid pleaded; and also for that, that the said *T. J.* and *E.* by their said replication ought to have pleaded further in form following, or to the like effect, to wit, that the said *H. F.* on the day of suing out the said original writ of the said *T. J.* and *E.* had divers goods and chattels which were of the said *T. W.* at the time of his death in the hands of him the said *H. F.* to be administred, to the value of the said 200 *l.* in the said declaration specified, besides goods and chattels which were liable and bound by the said executions of the said several judgments, and to the payment of the said 20 *l.* and 18 *s.* in the said condition of the said writing mentioned, and to the said several sums of money by said other writing as aforesaid due, so that the said *H.* might have joined issue thereupon in due form of law.

*Joinder in
Demurrer.*

And the said *T. L. J.* and *E.* for that they have above alledged sufficient matter in law for them the said *T. L. J.* and *E.*
to

to maintain their action against the said *H.* which they are ready to verify, which said matter the said *H.* does not deny, nor any way answer thereto, but intirely refuses to admit the verifying the same, as before, pray judgment, and their damages by occasion of the premisses to be adjudged to them, &c. And because the justices here would advise themselves of ^{Continuance by Cur. advisar. vult.} and upon the premisses before they give judgment thereon, a day is given to the said parties here until from the day of *St. Michael* in three weeks, to hear their judgment thereupon, for that the said justices here are not yet, &c. *

— to wit, *C. P.* late of, &c. was attached to answer the right honourable *D. lord H.* of a plea of trespass upon the case: ^{Declaration in case Sur ass. on a feigned issue touching a Modus decimandi. C. B.} And whereupon the said *D. lord H.* by *M. H.* his attorney complains, wherefore *whereas* on the 21st day of *December* in the 30th year of the reign of our Lord the present king, at the parish of *K.* in the county aforesaid, a certain discourse was moved and had between the said *D. lord H.* and the said *C.* of and concerning three tenements of the said *D. lord H.* in the parish of *K.* aforesaid, with the lands thereunto respectively appertaining, formerly parcel of the possession of the late

* Judgment for the defendant, because the plaintiff did not say in his replication that the defendant had assets *ultra*, to pay the 20 *l.* for, if he had not, he is not obliged to pay the plaintiff the debt upon contract before the debt upon bond due at a day yet to come. 3 *Lev.* 57. *S. C.*

dissolved monastery of *Bellalanda*, otherwise *Byland*, in the county aforesaid, to wit, one tenement with the appurtenances then in the possession of one *J. R.* another tenement with the appurtenances then in the possession of one *R. M.* and another tenement with the appurtenances called *Great Combe*, then in the possession of one *C. B.* Upon which said discourse the said *D. lord H.* asserted and affirmed, that the proprietors and tenants of the said tenement in the possession of the said *J. R.* from the time to the contrary whereof the memory of man is not, have paid and been used, and bound to pay to the rector of the parish-church of *K.* aforesaid, for the time being, eight fleeces of wool, and 4 s. of lawful money of *England*, yearly and every year, in lieu and compensation of all and all manner of tithes growing, increasing and renewing upon the same tenement, and the lands thereunto belonging, within the parish aforesaid; And that for the whole time aforesaid the proprietors and tenants of the said tenement in the possession of the said *R. M.* have paid, and been used and bound to pay to the rector of the parish-church of *K.* aforesaid, for the time being, 1 s. 5 d. of lawful money of *England*, yearly and every year, in lieu and compensation of all and all manner of tithes growing, increasing and renewing upon the same tenement and the lands thereunto belonging, within the parish aforesaid; And also that all the proprietors and tenants

tenants of the said tenement called *Great Combe*, from the time to the contrary whereof the memory of man is not to the contrary, have paid, and been used and bound to pay to the rector of the parish-church of *K.* aforesaid, for the time being, ten fleeces of wool and two lambs, at the feast of *St. John* the baptist, yearly and every year, in lieu and compensation of all and all manner of tithes growing, increasing and renewing upon the same tenement, and the lands thereunto belonging, within the parish aforesaid: Which said several prescriptions and manners of tithing the said *C.* then and there denied, asserting that the tithes for the same tenements are and have been payable in kind. And thereupon the said *C.* on the same Assumpst. 21st day of *December* in the 30th year aforesaid, at the parish of *K.* aforesaid, in consideration that the said *D. lord H.* at the special instance and request of the said *C.* had then and there paid to the said *C.* 50 s. of lawful money of *England*, undertook and faithfully promised the said *D. lord H.* that if such prescription and manner of tithing concerning the said tenement in the possession of the said *J. R.* as the said *D. lord H.* then and there had asserted, was true, then he the said *C.* would well and truly pay 40 s. of like lawful money to the said *D. lord H.* when afterwards he should be thereunto requested; and also, that if such prescription and manner of tithing concerning the said tenement in the possession of the said

R. M. as the said D. lord H. then and there had asserted, was true, then he the said C. would well and truly pay other 40 s. of like lawful money to the said D. lord H. when afterwards he should be thereunto requested: And further, that if such prescription and manner of tithing concerning the said tenement called *Great Combe*, as the said D. lord H. then and there had asserted, was true, then he the said C. would well and truly pay other 40 s. of like lawful money to the said D. lord H. when afterwards he should be thereunto requested. And the said D. lord H. in fact says, that at the time of the said discourse such respective prescriptions and manners of tithing concerning the several and respective tenements aforesaid, as were asserted by the said D. lord H. as aforesaid, were and still are true; whereof the said C. afterwards, to wit, on the last day of *December* in the 30th year aforesaid, at the parish of *K.* aforesaid, had notice: *Nevertheless* the said C. no ways regarding his said several promises and undertakings, but contriving and fraudulently intending to deceive and defraud the said D. lord H. in the premisses, has not yet paid the said several sums, amounting in the whole to 6 l. to the said D. lord H. (altho' the said C. on the 10th day of *January* in the 30th year aforesaid, and often afterwards, at the parish of *K.* aforesaid, was requested to pay the same); but he has hitherto intirely refused, and still does refuse to pay him the same: Wherefore the said D. lord H.

Averment.

Breach.

H. says that he is injured, and has damage to the value of 20 *l.* And thereupon he brings suit, &c.

And the said *C.* by — his attorney *Plai.* comes and defends the force and injury when, &c. and says that the said *D.* lord *H.* ought not to have his said action against him, because he says, that well and true it is that he did undertake in manner and form as the said *D.* lord *H.* has above declared against him; but the said *C.* further says, as to the first promise in the said declaration specified, that the tithes from time to time growing, increasing and renewing upon the tenement in the possession of the said *J.R.* always have been paid, and ought to be paid in kind; *Without this*, that the proprietors and tenants of the same tenements, from the time to the contrary whereof the memory of man is not, have been used and bound to pay to the rector of the parish-church of *K.* aforesaid, for the time being, eight fleeces of wool, and 4 *s.* of lawful money of *England*, yearly and every year, in lieu and compensation of tithes, growing, increasing and renewing upon the same tenement and the lands thereunto belonging, within the said parish, as the said *D.* lord *H.* above in his said declaration has alleged: And this he is ready to verify. And as to the second promise, &c. [the plea to the second and third promises respectively as above, the traverse to each in the very words of the prescription] Where-

Wherefore he prays judgment, if the said D. lord H. ought to have his said action against him, &c.

Replication.

And the said D. lord H. as to the plea of the said C. as to the first promise in the said declaration specified, says that all the proprietors and tenants of the said tenement in possession of the said J. R. from the time to, &c. [in the words of the prescription] in manner and form as the said D. lord H. in his said declaration has alledged; And of this he puts himself upon the country: And the said C. does so likewise, &c. And as to the said plea of the said C. as to the second promise in the said declaration specified, the said D. lord H. says that [in the words of the prescription] in manner and form as the said D. lord H. in his said declaration has alledged; And of this he puts himself upon the country: And the said C. does so likewise, &c. And as to the said plea of the said C. as to the third promise in the said declaration specified, the said D. lord H. says, that [in the words of the prescription] in manner and form as the said D. lord H. in his said declaration has alledged; And of this he puts himself upon the country: And the said C. does so likewise, &c.

Declaration in case Sur ass. The defendant, in consideration his elder brother would not convey lands to his younger brother, promises to pay him 20l. C. B.

— to wit, A. S. late of, &c. was attached to answer W. S. of a plea of trespass upon the case, &c. And whereupon the said W. by J. S. his attorney complains, that *whereas H. S. brother of the said*

said *A.* and *W.* now deceased, in his lifetime, to wit, on the 9th day of *January* in the — year of, &c. was seised in his demesne as of fee, of and in a close called *B.* lying and being in the parish of *G.* in the county of *T.* and the said *H.* being so seised thereof, and then languishing with a certain disease, declared that he the said *H.* then intended to convey to the said *W.* and his heirs for ever (the said *W.* then being the youngest brother of the said *H.*) the said close, unless the said *A.* would consent and promise to pay to the said *W.* 20 *l.* of lawful money of *England*: Of which said intention of the said *H.* the said *A.* afterwards, to wit, on the same day and year, at *D.* aforesaid, having notice, the said *A.* then being brother and heir apparent of the said *H.* in consideration that the said *H.* at the special instance and request of the said *A.* would forbear to convey the said close to the said *W.* undertook, and then and there faithfully promised the said *H.* that he the said *A.* would well and truly pay to the said *W.* the sum of 20 *l.* of lawful money of *England*, when after the death of the said *W.* he should be thereunto requested. And the said *W.* in fact says, that the said *H.* trusting to the said promise and undertaking of the said *A.* did forbear to convey the said close to the said *W.* and afterwards, to wit, on the 15th day of *January* in the — year of, &c. at, &c. died without issue of his body begotten, whereby

whereby the said close descended to the said *A.* as brother and heir of the said *H.* And also whereas the said *H.* in his lifetime, to wit, on the said 9th day of *January* in the — year of, *Ec.* was seised in his demesne as of fee, of and in a certain other close in the parish of *D.* aforesaid, called *B.* and the said *H.* being so seised thereof, and then being in an ill state of health, the said *H.* on the said 9th day of *January* in the — year of, *Ec.* for the mutual love and affection which he then had towards the said *W.* his youngest brother, appointed a certain deed to be written and prepared, to be executed by the said *H.* by which the said *H.* would convey and assure the said other close to the said *H.* and his heirs for ever, in reversion immediately after the death of the said *H.* the said *A.* having notice thereof, and then being brother and heir apparent of the said *H.* afterwards, to wit, on the said 9th day of *January* in the — year of, *Ec.* at the parish of *D.* aforesaid, in consideration that the said *W.* at the instance and request of the said *A.* would consent and agree to prevent and obstruct the making and writing the said deed so as aforesaid appointed to be written by the said *H.* undertook, and then and there faithfully promised the said *W.* that he the said *A.* would pay to the said *W.* other 20 *l.* of lawful money of *England*, when after the death of the said *H.* he should be thereunto requested.

And

And the said *W.* further in fact says, that he the said *W.* trusting to the said promise and undertaking of the said *A.* prevented and obstructed the writing and making the said deed, to wit, at the parish of *D.* aforesaid; and afterwards, to wit, on the said 15th day of *January* in the — year of, &c. aforesaid, the said *H.* died at the said parish of *D.* without issue of his body begotten, whereby the said close descended to the said *A.* as brother and heir of the said *H.* Yet the said *A.* no ways regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W.* in the premisses, has not paid the said several sums, which amount in the whole to the sum of 40 *l.* or any part thereof, to the said *W.* (altho' after the death of the said *H.* to wit, on the — day of, &c. in the — year, &c. and often afterwards, at, &c. the said *A.* was thereunto requested by the said *W.*) but he has hitherto intirely refused, and still does refuse to pay him the same: Wherefore he says he is injured, and has damage to the value of 40 *l.* And thereupon he brings suit, &c.

—, to wit, *J. R.* late of, &c. was attached to answer *P. P.* spinster, of a plea of trespass on the case, &c. And whereupon the said *P.* by *J. S.* her attorney complains, wherefore *whereas* on the 25th day of *March* in the 28th year of the reign of

*Declaration in
case Sur ass.
on a promise
of marriage.
C. B.*

of our sovereign lord *Charles II.* now king of *England*, &c. at the castle of *Tork* a certain discourse was moved and had between the said *P.* and *W. P.* her father, and the said *J.* and *R. R.* his father, of a marriage to be had and solemnized between the said *P.* and the said *J.* and upon that discourse it was then and there agreed between all the said parties that the said marriage should be had and solemnized upon the *Sunday* next after the feast of *Easter*, being the second day of *April* next ensuing, [other agreements between the fathers for portions, &c. set forth] the said *J.* after the said agreement so made, to wit, on the said 25th day of *March* in the year aforesaid, at the castle of *Tork* aforesaid, in consideration thereof, and also in consideration that the said *P.* at the special instance and request of the said *J.* had then and there undertook, and faithfully promised the said *J.* that she the said *P.* would take the said *J.* for her husband, according to the said agreement, undertook, and then and there faithfully promised the said *P.* that he the said *J.* would marry the said *P.* according to the said agreement. And the said *P.* in fact says, that she and the said *W.* her father were always ready and often offered to perform the said agreement in all things on their and each of their parts, to be performed according to the form and effect of the said agreement. And also, whereas the said *J.* on the 3d day of *April* in the 28th year aforesaid,

*Laid over
again.*

said, at the said castle of T. in consideration that the said P. then and still being unmarried, at the special instance and request of the said J. being then also unmarried, had then and there agreed with the said J. and undertook and faithfully promised the said J. that she the said P. would take the said J. for her husband, undertook, and then and there faithfully promised the said P. that he the said J. would marry the said P. *Nevertheless the* *Breach.* said J. no ways regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said P. in the premisses, did not marry the said P. (altho' on the 11th day of April in the 28th year aforesaid, and often before and afterwards, at the castle of T. aforesaid, he was thereunto requested by the said P.) but the said J. afterwards, to wit, on the 2d day of December in the 28th year aforesaid, at the castle of T. aforesaid, married one A. L. [an *Indeb. assumpsit* for money *Other counts.* lent, and an *Indeb. assumpsit* for money laid out.]

And the said J. by L. R. his attorney *Plea.* comes and defends the force and injury when, &c. and says that the said P. ought not to have her said action thereupon against him, because as to the first promise *As to first count, offered to marry plaintiff, but she refused.* in the said declaration above supposed to be made, he says, that after the time of the said promise and undertaking, and before the day of suing out the original writ

Traverse.

*To the second
count, the like.*

*As to the third
count, Non as-
sumpsit.*

writ of the said P. to wit, on the 30th day of *March* in the said 28th year of the reign of our said lord the present king, at the castle of T. aforesaid, he the said J. requested the said P. that she would be ready to take the said J. for her husband; according to the form and effect of the said agreement; but the said P. then and there intirely refused to do the same, and she was not ready to marry the said J. on the said 2d day of *April* in the said declaration mentioned: *Without this*, that the said J. refused to marry the said P. according to the said agreement, as the said P. has above declared against him; And this he is ready to verify. And as to the second promise in the said declaration above supposed to be made, he says, that after the time of the said promise and undertaking, and before the day of suing out the original writ of the said P. to wit, on the 10th day of *April* in the 28th year aforesaid, at the castle of T. aforesaid, and often afterwards there, the said J. was ready and offered to the said P. to marry the said P. but the said P. then and there absolutely refused and denied to agree or consent thereto, and refused to take the said J. for her husband: And this he is ready to verify. And as to the said promise for the said 30 l. above supposed to be made, the said J. says, that he did not undertake in manner and form as the said P. has thereupon above declared against him; And

of this he puts himself upon the country:

And the said P. does so likewise. And Issue.

as to 10 l. parcel of the said 20 l. in the said declaration mentioned, the said J. says *As to the fourth, Non assumpsit, as to part.* that he did not undertake in manner and form as the said P. has above declared against him;

And of this he puts himself upon the country: *And the said P. does Issue.*

so likewise. *And as to 10 l. residue of the said 20 l. the said J. says that the said P. ought not to have her said action thereupon against him, because he says, that after the time of the promise for the said 20 l. above supposed to be made, and before the suing out the said original writ of the said P. to wit, on the 10th day of February in the 29th year of the reign of our Lord the present king, at the castle of T. aforesaid, the said J. offered to the said P. the said 10 l. residue of the said 20 l. which said 10 l. the said P. intirely refused to receive; And the said J. further says, that he at all times afterwards hitherto was and still is ready to pay to the said P. the said 10 l. and has brought the same here into court ready to be paid to the said P. if she the said P. is willing to receive the same; And this he is ready to verify: Wherefore he prays judgment if the said P. ought to have her said action thereupon against him, &c.*

And the said P. as to the said plea of the said J. as to his second promise and undertaking above pleaded in bar, says, that by any thing therein contained she

Replication as to the second plea, did not offer to marry her.

Issue.

*A demurrer to
the first plea.*

*Cause of de-
murrer.*

*Replication as
to the tender,
Esoppel that
it was pleaded
after impar-
lance.*

ought not to be barred from having her said action against the said J. because she says that the said J. after the time of the said promise and undertaking made, did not offer to the said P. to marry the said P. in manner as he in pleading has above alledged; And this she prays may be inquired of by the country: And the said J. does so likewise, &c. And as to the said plea of the said J. above pleaded in bar to his said first promise and undertaking, the said P. says, that the said plea and the matter therein contained are not sufficient in law to bar the said P. from having her said action against him; and that she has no need, and is not by the law of the land bound to answer to the said plea in manner and form aforesaid pleaded. And for cause of demurring in law upon the said plea, the said P. according to the form of the statute in such case made and provided, shews to the court here the cause following, to wit, that the traverse in the said plea contained is immaterial and superfluous, and thereby a matter not traversable, which is not alledged in the said declaration, is traversed; And this she is ready to verify: Wherefore for default of a sufficient plea of the said J. in this behalf, the said P. prays judgment, and her damages by occasion of the not performing the said promise and undertaking, to be adjudged to her. And as to the said plea of the said J. as to the said 10 l. parcel of the said 20 l. in the said declaration

ration mentioned, supposed as aforesaid to be tendered by the said *J.* the said *P.* says that the said *J.* ought not to be admitted to say that he was at all times hitherto ready to pay the said 10 *l.* to the said *P.* because she says, that she the said *P.* heretofore, to wit, in *Easter* term last past, in the court here declared in the plea aforesaid against the said *J.* in manner and form aforesaid: And thereupon the said *J.* in the same *Easter* term, by his said attorney came and defended the force and injury when, &c. and saving to himself all and all manner of advantages, exceptions and allegations whatsoever, as well to the said writ as to the said declaration, prayed leave thereupon to imparl here until on this day, to wit, on the morrow of the *Holy Trinity* thence next ensuing, and had it, &c. The same day was given to the said *P.* here, &c. as it sufficiently appears of record in the said court of our said lord the king here; And this she is ready to verify by the said record: Wherefore she prays judgment, if the said *J.* ought to be admitted to say that he was at all times hitherto ready to pay the said 10 *l.* to the said *P.* &c.

And the said *J.* for that he has above Joinder in de-
pleaded sufficient matter to bar the said *P.* murrer.
from having her said action against him
as to the first promise in the said declaration above-mentioned, which he is ready to verify, which said matter the said *P.* does not deny, and has not any ways answered

swered the same, prays judgment, and that the said P. may be barred from having her said action as to the said promise against him, &c. And further, the said J. for that he has above alledged sufficient matter in law to bar the said P. from having her said action against him for the said 10 l. residue of the said 20 l. in the said declaration specified, and is ready to verify the same, which said matter the said P. does not deny, and has not any ways answered thereto, but intirely refuses to admit the verifying the same, prays judgment, and that the said P. may be barred from having her said action against him for the said 10 l. &c.

*Declaration by
an administra-
trix in case
Sur ass. to pay
costs in chan-
cery, in consi-
deration that
the intestate
forbore to pro-
secute con-
tempts, and
gave day of
payment. C.B.*

Yorkshire, to wit, J. C. late of, &c. was attached to answer J. P. administratrix of all and singular the goods and chattels which were of W. P. Gent. at the time of his death, who died intestate, of a plea of trespass on the case, &c. And whereupon the said J. by A. M. her attorney complains, that *whereas* the said J. in the life-time of the said W. to wit, on the — day of, &c. intending to exhibit his bill of complaint in the high court of Chancery of our lord the present king against the said W. sued out of the said court of Chancery, the said court then being at W. in the county of M. a certain writ of our said lord the king of *Subpana*, directed to the said W. by which said writ our said lord the king commanded the

the said *W.* that the said *W.* under the penalty of 100 *l.* should be in the said court of Chancery on the — day of, &c. next ensuing, to answer to those things which then and there should be objected against him the said *W.* Which said writ afterwards, and before the return thereof, to wit, on the — day of, &c. at, &c. the said *J.* caused to be delivered to the said *W.* and the said *W.* at the return of the said writ appeared in the said court of Chancery, according to the command of the said writ: And afterwards such proceedings were in the same court, that 23 *l.* were adjudged by the said court of Chancery to the said *W.* against the said *J.* for his costs, charges and expences, by reason and occasion of the unjust vexation of the said *J.* had and sustained by the said *W.* in the said court, as by the records and memorandums of the same, remaining at *W.* in the county of *M.* more fully appears. For obtaining which said 23 *l.* the said *W.* afterwards, to wit, on the — day of, &c. sued forth out of the same court of Chancery, the said court then being at *W.* in the county of *M.* aforesaid, a certain writ of our said lord the king of *Subpœna* directed to the said *J.* by which said writ our said lord the king firmly injoining, commanded the said *J.* that he the said *J.* immediately after the receipt of the said writ, should pay, or cause to be paid to the said *W.* or to the bearer of the said writ, the said

23 *l.* and that the said *J.* should in no wise omit this, under the penalty of 100 *l.* Which said writ of *Subpœna* last mentioned, the said *W.* afterwards, to wit, on the — day of, *Et.* delivered to *A. B.* then and still one of the attornies of our lord the king of the bench here, and then the said *W.*'s solicitor in the said suit in Chancery, to the intent that the said *A. B.* should demand and receive of the said *J.* the said 23 *l.* to the use of the said *W.* And afterwards the said *A.* in the lifetime of the said *W.* to wit, on the same day and year last aforesaid, at, *Et.* shewed to the said *J.* the said last mentioned writ of *Subpœna*, directed to the said *J.* as aforesaid, and then and there demanded of the said *J.* the said 23 *l.* according to the tenor of the said writ. And thereupon the said *J.* on the same day and year, at, *Et.* in consideration that the said *A.* at the special instance and request of the said *J.* would stay one week for the said 23 *l.* and would not sue forth any writ of attachment out of the said court of Chancery against the said *J.* for not paying the said 23 *l.* upon the demand aforesaid, undertook, and then and there faithfully promised the said *A. B.* that he the said *J.* would well and truly pay the said 23 *l.* to the said *W.* when he the said *J.* after the end of the said week then next ensuing should be thereunto requested. And the said *J.* in fact says, that the said *W.* and *A. B.* trusting to the said promise and

Assumpsit.

Averment,
consideration
performed.

and undertaking of the said J. did stay one week from thence next ensuing for the said 23 l. and did not sue forth, nor did either of them sue forth at any time any writ of attachment against the said J. for or concerning the said 23 l. or the non-payment thereof: [*Indeb. ass.* for 20 l.] Yet the said J. not regarding his several promises and undertakings aforesaid, but contriving and fraudulently intending to deceive and defraud the said W. in his life-time, and the said J. after the death of the said W. has not paid the said several sums of money, amounting in the whole to, &c. either to the said W. in his life-time, or to the said J. after the death of the said W. (to which J. administration of all and singular the goods and chattels, rights and credits which were of the said W. at the time of his death, after the death of the said W. to wit, on the — day of, &c. at, &c. by, &c. was in due manner committed) but intirely refused to pay the same to the said W. in his life-time, and to the said J. after the death of the said W. and still refuses to pay the same to the said J. altho' the said J. was thereunto requested by the said W. in his life-time, and by the said J. after the death of the said W. to wit, on the — day of, &c. at, &c. Wherefore she says she is injured, and has damage to the value of 40 l. And thereupon she brings suit, &c. And she brings here into court the said letters of

Breach.

Administration
committed.

Profert.

administration, which testify the committing the said administration in form aforesaid, &c.

*Declaration
in case Sur
assumpsit to
perform an
award, C. B.*

— to wit, *A. B.* late of, &c. was attached to answer *C. D.* of a plea of trespass on the case, &c. And whereupon the said *C. D.* by — his attorney complains, wherefore *whereas* on the — day of, &c. at, &c. a certain suit was moved and depending between the said *A.* and *C.* concerning, &c. To compromise and determine which, as well the said *A.* as the said *C.* put themselves upon the arbitration of *E. F.* and *G. H.* arbitrators indifferently chosen between them to award, order and adjudge of and concerning the said suit, so that the award should be given in by parol or in writing under the hands and seals of the said *E.* and *G.* before the — day of, &c. and if the said arbitrators should refuse or omit to make any award, order or judgment concerning the premisses by the time aforesaid, then upon the arbitration of *J. K.* an umpire indifferently chosen and named by the said *A.* and *C.* to award of and concerning the premisses, so that the umpirage should be given by parol or in writing under the hand and seal of the said *J. K.* before the — day of, &c. *In consideration whereof,* and in consideration that the said *C.* on the said — day of, &c. at, &c. aforesaid, at the special instance and request of the said *A.* had undertaken and promised to the said *A.*

to pay to the said *A.* 20 *l.* of lawful money of *England*, if he the said *C.* should not perform and fulfil the award of the said arbitrators, or of the said *J.* to be made of and upon the premisses in form aforesaid, in all things on his part to be performed and fulfilled, the said *A.* undertook, and on the said — day of, *Éc.* at, *Éc.* aforesaid, faithfully promised the said *C.* that if he the said *A.* should not perform the award or umpirage aforesaid, to be made in form aforesaid of and upon the premisses, in all things on his part to be performed and fulfilled, then he the said *A.* would pay 20 *l.* of lawful money of *England* to the said *C.* when he should be thereunto afterwards requested. And the said *C.* in fact says, that the said arbitrators omitted to make any award of and upon the premisses before the said — day of, *Éc.* and that the said *J.* in default thereof, having taken upon him the burthen of the said arbitrament, before the said — day of, *Éc.* to wit, on the — day of, *Éc.* at, *Éc.* awarded, ordered and adjudged of and upon the said premisses in form following, to wit, that the said *A.* should pay 10 *l.* to the said *C.* on the — day of, *Éc.* in full discharge of, *Éc.* in or at the dwelling-house of one *L. M.* in *D.* aforesaid. And the said *C.* further in fact says, that he the said *C.* was ready on the said — day of, *Éc.* at the dwelling-house of the said *L. M.* to receive the said

10 *l.*

10 l. according to the form and effect of the said award; but the said *A.* not regarding the said award, did not pay the said 10 l. to the said *C.* on the said — day of, &c. or at any time afterwards; by reason whereof the said *A.* ought to have paid the said 20 l. to the said *C.* according to his said promise and undertaking: *Nevertbeless* the said *A.* no ways regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *C.* in this case, has not paid the said 20 l. to the said *C.* (altho' the said *A.* afterwards, to wit, on the — day of, &c. and often afterwards, at, &c. aforesaid, was requested to pay the same by the said *C.*) but he has hitherto refused, and still does refuse to pay him the same: Wherefore he says he is injured, and has damage to the value of 30 l. And thereupon he brings suit, &c.

Declaration in case, for erecting a furnace and chimney near the plaintiff's house.
B. R.

Middlesex, to wit, *M. K. Esq;* complains of *J. W.* being in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself; *For that whereas* the said *M.* on the 16th day of *September* in the year of our Lord 1741. and for a long time before, and continually since hitherto, was and yet is possessed of a certain messuage with the appurtenances, situate in the parish of *St. James* in the liberty of *W.* and county of *M.* in which said messuage the said *M.* with his family, during the whole time aforesaid, hath re-
sided

ided and doth still reside in the same: *Nevertheless* the said *J.* nothing ignorant of the premisses, but contriving and maliciously intending to injure the said *M.* and to render the said messuage of the said *M.* not fit for habitation, and to deprive and hinder the said *M.* of the enjoyment, use and profit of his said messuage, whilst the said *M.* was possessed of the said messuage, and with his family resided in the same, that is to say, the said 16th day of *September* in the said year of our Lord 1741. newly erected and made a certain furnace and chimney at the said parish near to the said messuage: *And* afterwards, that is to say, on the said 16th day of *September* in the said year of our Lord 1741. and on several other days and times between that day and the 16th day of *April* in the year of our Lord 1742. the said *J.* caused great quantities of sea-coal and other combustible matter to be burnt in the said furnace so as aforesaid newly erected, to wit, in the parish aforesaid, in the liberty and county aforesaid, and by reason thereof the smoak, ashes and foot, in great abundance arising and issuing from the said furnace and chimney so as aforesaid erected, at the several times last mentioned entered and penetrated into the said messuage of the said *M.* and spoiled and rendered of no value great part of the furniture of the said *M.* standing and being in his said messuage; and the air in the said messuage, at the several times last afore-

aforesaid was rendered noisome and unwholesome, to the great annoyance and nuisance of the said *M.* and his family residing in his said messuage, and divers windows of the said messuage of the said *M.* were thereby during the time last mentioned covered with the said soot, and were thereby blackened and obscured, to the great hurt and nuisance of the said *M.*

Second count.

And whereas also the said *M.* on the said 16th day of *September* in the said year of our Lord 1741. and during the whole time aforesaid, being so as aforesaid possessed of the said messuage with the appurtenances, situate in the parish of *St. James* in the liberty of *W.* and county of *M.* and with his family so residing in the same, the said *J.* further contriving and maliciously intending to injure the said *M.* and to render the said messuage of the said *M.* not fit for habitation, and to deprive and hinder the said *M.* of the enjoyment, use and profit of his said messuage, whilst the said *M.* was possessed of the said messuage, and with his family resided in the same, that is to say, on the 20th day of *September* in the said year of our Lord 1741. newly erected and built a certain other chimney at the parish aforesaid, near to the said messuage; and afterwards, to wit, on the said 20th day of *September* in the said year of our Lord 1741. and on several other days and times between that day and the 16th day of *April* in the year of our Lord 1742. caused
great

great quantities of sea-coal and other combustible matter to be burnt in the said last mentioned chimney so as aforesaid newly built, to wit, in the parish aforesaid, in the liberty and county aforesaid; and by reason thereof the smoak, ashes and soot, in great abundance arising and issuing from the said last mentioned chimney so as aforesaid erected, at the several times last mentioned entered and penetrated into the said messuage of the said *M.* and spoiled and rendered of no value other part of the furniture of the said *M.* standing and being in his said messuage, and the air in the said messuage at those times thereby was rendered noisome and unwholesome, to the farther annoyance and nuisance of the said *M.* and his family residing in his said messuage, and divers other windows of the said messuage of the said *M.* were thereby during the time last mentioned covered with the said soot, and were thereby blackened and obscured, to the great hurt and nuisance of the said *M.* Wherefore the said *M.* says that he is injured, and hath sustained damage to the value of 10*l.* And thereof he brings suit, &c. Pledges, &c.

Cornwall, to wit, *R. P.* late of, &c. was Declaration in attached to answer *E. C.* of a plea of trespass, for building so near the pass on the case: And whereupon the said *E.* by *J. W.* his attorney complains, that plaintiff's windows as to deprive him of the light. *C. B.* whereas on the 1st day of *October* in the year of our Lord 1735. and always afterwards, he the said *E.* was and still is possessed

possessed of and in a certain antient messuage with the appurtenances, situate, lying and being at *P.* aforesaid in the county aforesaid, in which said messuage now are, and for the whole time aforesaid and before were certain windows on the west-part thereof, through which said windows he the said *E.* (until the obstructions and damage hereafter mentioned) of right ought to have and enjoy the chearful light and wholesome air which by and through the said windows entered and were conveyed into the said messuage, and also the use of the said messuage, without any obstruction, hindrance or damage, to the great benefit and advantage of him the said *E.* Yet the said *R.* not ignorant of the premisses, but contriving and fraudulently and maliciously intending in this behalf unlawfully to oppress him the said *E.* and to spoil and deprive him of the use and benefit of his said windows, and of his said messuage, the said *R.* afterwards, to wit, the said 1st day of *October* in the said year of our Lord 1735. and from that day to the 21st day of *May* in the year of our Lord 1737. at *P.* aforesaid in the county aforesaid, certain walls and other buildings lately erected and built so near to the said messuage, unlawfully and injuriously, and to the nuisance of the said messuage of the said *E.* continued, that by reason thereof not only the said windows of him the said *E.* were greatly darkened, obscured and obstructed,

but also the rain-waters descending from the said buildings greatly damaged and spoiled the said messuage of the said *E.* by which he the said *E.* during all the time aforesaid lost and was deprived of the use and benefit of the light and air which would have entered and been conveyed into his said messuage by and thro' the windows aforesaid, if the said walls and buildings had not continued as aforesaid, but also the benefit, use and advantage of his said messuage, to the damage of him the said *E.* of 200 *l.* And thereupon he brings this suit, &c.

Middlesex, to wit, *E. R.* widow, complains of *E. T.* being in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself, for that whereas she the said *E.* on the 20th day of *October* in the year of our Lord 1743. was, and from thenceforth hitherto has been and yet is possessed of and in divers, to wit, two rooms with the appurtenances in the parish of *St. James* within the liberty of *W.* in the county of *M.* and over a certain great place or building there called the market-house, otherwise *St. James's* market-house, and by reason thereof she the said *E.* during all that time, of right ought to have had and to have a way from and out of a certain place in the said parish called the butter-market, in and through a certain narrow entry belonging to the said market, and from thence up certain stairs to the said rooms

Declaration in case for leaving open the door of a wine-vault, whereby plaintiff fell in, &c. B. R.

rooms of the said *E.* and to and from thence back again to the said place called the butter-market, to go, return and pass every year, at all times of the year, at her will and pleasure. *And whereas* the said *E.* on the said 20th day of *October* in the year aforesaid, was, and from thence hitherto has been possessed of and in a certain wine-vault with the appurtenances, in the said parish and county, near unto the said place called the market-house, otherwise *St. James's* market-house, the door-way and stairs of which said wine-vault during all that time have been and still are in the said narrow entry: *Yet* the said *E.* knowing the premisses, but contriving and intending to injure the said *E.* whilst she the said *E.* was so possessed of her said rooms with the appurtenances, and whilst the said *E.* was so possessed of his said wine-vault as aforesaid, to wit, on the said 20th day of *October* in the year aforesaid, in the night-time of the said day, wrongfully and injuriously kept and continued open, and wrongfully and injuriously caused, permitted and suffered to be kept and continued, the door of the said wine-vault opening in the said narrow entry, and the way going down the stairs of the said wine-vault in the said narrow entry open, and wholly uncovered and unstopped up, and without fixing or putting any light at or near the said door or stairs, that the said door or stairs might be seen to be so open; whereby the said

2

E.

E. coming along the said narrow entry, in her said way from the said place called the butter-market, up to the said stairs leading to her said rooms, and using her said way there as she might lawfully do whilst the said door and stairs were so kept and continued open as aforesaid, on the same day and year, in the night-time of that day, through the said door and stairs, being so open as aforesaid, then and there with great force, unavoidably and against her will, fell down thro' the door and stair-way of the said wine-vault into the said wine-vault; whereby the said *E.* by the said fall was then and there so greatly wounded and bruised in her legs, thighs, arms, back, and divers other parts of her body, that not only the life of the said *E.* was for a long time, to wit, for the space of twelve weeks then next following thereby greatly despaired of, but the said *E.* during that time was thereby prevented and hindered from following and exercising her lawful business and employment during all that time, and has been forced and obliged to lay out and expend divers large sums of money, in the whole amounting to 50 *l.* in and about the healing and curing herself of the said wounds and bruises, to the said *E.* her damage of 80 *l.* And therefore she brings her suit, &c.

J. L. for plaintiff,	} Pledges to	{ J. D.
and		
— for defendant,	} prosecute	{ R. R.
Vol. II.		

*Declaration in
case at the suit
of an attorney,
for digging a
trench in a
street, where-
in plaintiff fell
and broke his
leg. C. B.*

— to wit, R. M. late of, &c. was attached by the writ of our lord the king of privilege issuing out of the court here, to answer T. P. Gent. one of the attornies of the court of our lord the king of the bench, of a plea of trespass on the case: And whereupon the said T. in his proper person complains, that *whereas* in the town of N. upon T. aforesaid there is, and from the time to the contrary whereof the memory of man is not to the contrary, has been a certain antient street called the *Side*, which said street is, and by the whole time aforesaid has been the king's high-way for all subjects of our lord the present king and his predecessors, kings and queens of *England*, to go, pass over and ride, in, by and through the said street, at their will and pleasure; *Tet* the said R. not ignorant of the premisses, on the — day of, &c. without any lawful warrant dug and made a trench in the said street cross great part of the said street, and did not take care to fill and stop up the same with earth; whereby the said T. being a subject of our said lord the present king, afterwards, to wit, on the — day of, &c. at the said town of *Newcastle upon Tyne*, in the night-time of the same day, not knowing of the said trench, riding upon his horse in and thro' the said street, fell with his horse into the said trench, and thereby the leg of the said T. was broken, and the said T. was greatly hurt and bruised; and also his said horse

horse was greatly injured, to the damage of the said T. of 500 l. And thereupon he brings suit, &c.

Middlesex, to wit, *B. T.* late of the *Middle Temple, London*, Esq; was attached to answer T. S. Gent. executor of the testament and last will of R. S. Esq; deceased, during the minority of R. S. son of the said R. S. Esq; deceased, of a plea of trespass upon the case: And whereupon the said T. S. by R. G. his attorney complains, whereas the said R. S. in his life-time heretofore, that is to say, in the term of St. Michael in the 29th year of the reign of the lord Charles II. late king of *England*, &c. in the court of the said late king, before the king himself, (the said court being at *W.* in the county of *M.* aforesaid) by the consideration of the said court had recovered against one R. H. a certain debt of 100 l. and also 30 s. for his damages, which he had sustained by occasion of the detaining that debt whereof he was convicted, as by the record thereof now remaining in the court of our lord the king at *W.* aforesaid, in full force and vigour, no ways reversed, annulled, or in any manner satisfied, more fully appears. And whereas also the said debt and damages being no ways paid or satisfied, and the said R. H. being further indebted to the said R. S. in the sum of 108 l. of lawful money of *England*, for the rent of a certain messuage with the appurtenances, situate in the parish of

Declaration in case by an executor durante minoritate, for procuring R. H. who was indebted to the plaintiff's testator, to confess a fraudulent judgment, whereby plaintiff was defeated of recovering the debt. By original in B. R. Carth. 3. S. C. Comb. 51. Plaintiff's testator recovered a judgment against R. H. for 101 l. 10 s. R. H. also indebted to testator in 108 l. for rent.

Testator made his will, appointed plaintiff executor, and died.

Judgment for plaintiff on a Sci. Fa. brought on the said judgment.

R. H. possessed of divers goods and chattels.

Plaintiff intended to sue out a Fi. Fa. and also to sue for the rent.

St. Martin's in the Fields in the said county of *M.* then held by the said *R. H.* of the said *R. S.* for a certain term of years then unexpired, the said *R. S.* made his testament and last will in writing, and of the said testament constituted the said *T.* executor, and afterwards died; and the said *T.* in due form of law proved the said testament, and took upon him the burthen of the execution thereof. *And whereas* after the death of the said *R. S.* that is to say, in the term of *Easter* in the 32d year of the reign of the said lord the late king, in the said court of the said late king, before the king himself here, that is to say, at *W.* aforesaid, it was considered by the same court, that he the said *T.* executor, should have his execution against the said *R. H.* for the debt and damages aforesaid, according to the force, form and effect of the said recovery, as by the record thereof remaining in the same court more fully appears. *And whereas also* at the said time of adjudging that execution, the said *R.* was possessed of and in divers goods and chattels to the value of 200 *l.* then being in the said messuage, as of his own proper goods and chattels; *And* the said *T.* intended to sue out a writ of *Fi. Fa.* upon the said judgment to the sheriff of *Middlesex* aforesaid, to cause the said debt and damages to be made of the said goods and chattels, and also to prosecute at law the said *R. H.* for the said rent as aforesaid due and then being

being in arrear; *The* said *B.* well knowing *Defendant*
the premisses, and maliciously contriving, *fraudulently*
and with the said *R. H.* conspiring to de- *caused a judg-*
prive the said *T.* of his said several debts, *ment to be*
to obtain the said goods and chattels to *signed against*
the proper use of the said *B.* the said *the said R. H.*
B. afterwards unduly and fraudulently *at the suit of*
caused and procured a certain judgment *M. W.*
to be signed in the said court of the
said late king, before the king himself,
against the said *R. H.* for 160 *l.* of debt,
at the suit of one *M. W.* and to be inrolled
of record as of the term of the *Holy Tri-*
nity in the 32d year aforesaid; *When in* *when nothing*
truth and in fact the said *R. H.* was not *due to him.*
indebted to the said *M.* in the said 160 *l.*
or any part thereof: *And* the said *B.* by *And the goods*
pretext of a certain writ of the said late *of R. H. to be*
king of execution upon the said judgment, *taken in exe-*
prosecuted out of the said court, and di- *cution and de-*
rected to the sheriff of the county of *M.* *pendant.*
aforesaid, on the 18th day of *June* in the
year of our Lord 1680. the said goods
and chattels of the said *R. H.* out of the
said messuage to be amoved, and to the
said *B.* to be delivered, then and there
fraudulently caused and procured, and the
said goods and chattels to places unknown
to the said *T.* carried away, conveyed and
converted to his own use: *And* the said *R. H.* *ab-*
R. H. to places to the said *T.* also un- *sconds, and*
known, has also escaped, and by any pro- *cannot be ar-*
cess of law from that time hitherto cannot *rested.*
be taken and arrested; *Whereby* the said *Whereby has*
T. has wholly lost not only several sums *lost his said*
of *debts, &c.*

of money expended by him in suing for the said debts, but also the said several debts, to the damage of the said T. of 500 l. And thereof he brings suit, &c.

Demurrer.

And the said B. by B. K. his attorney comes and defends the force and injury when, &c. and says, that the matter contained in the said writ and declaration are not sufficient in law for the said T. to have maintained his said action against the said B. To which said matter the said B. has no need, nor is he bound by the law of the land to answer; And this he is ready to verify: Wherefore he prays judgment, if the said T. ought to maintain any action against the said B. in this case, &c.

Joinder.

And the said T. S. for that he has above declared sufficient matter in law to maintain his said action against the said B. T. which he is ready to verify, which said matter the said B. does not deny, nor in any manner answer thereto, but wholly refuses to admit the verification thereof, prays judgment, and his damages by the occasion aforesaid, to be adjudged to him, &c. But because the court of our said lord the king now here is not yet advised of giving their judgment of and upon the premisses, day is thereupon given to the parties aforesaid, before our lord the king, from the day

*Cur. advisar.
&c.*

wheresoever, &c. to hear their judgment of and upon the premisses, for that the court

court of our said lord the king now here is not yet, &c.

Judgment given for the plaintiff, and affirmed in parliament.

Middlesex, to wit, *T. B.* late of, &c. was attached to answer the right honourable *E.* lord *G.* baron of ———, one of the peers and great men of this realm, who sues as well for our lord the king as for himself, in a plea of trespass upon the case, &c. And thereupon the said lord *G.* who as well, &c. by *H. H.* his attorney complains, that *whereas* the said lord *G.* on the 29th day of *October* in the 9th year of the reign of our said lord the king, and long before, was, and ever since hath been, and yet is one of the barons and peers of this realm, and for all the time aforesaid hath had and yet hath a seat and vote in the parliament of *Great Britain*, as one of the peers of this realm: Nevertheless the aforesaid *T.* contriving and maliciously designing, against the form of the statute in that case made and provided, to raise great scandal of and concerning the said lord *G.* whereby discords might arise between the said *G.* and other peers, and great men and other subjects of this realm, and to hurt, injure and impair the good name, credit, state, dignity and honour of the said lord *G.* on the said 29th day of *October* in the 9th year aforesaid, at *W.* in the said county of *M.* in a certain discourse which he the said *T.* then and there had of and concerning

*Declaration in
case Sur le
Stat. de Scand.
Mag. C. B.*

cerning the said lord G. in the presence and hearing of divers of his majesty's faithful subjects, falsely and maliciously spoke, related, published, and with a loud voice declared of and concerning the said lord G. the false, scandalous and defamatory words here next following, that is to say, *He* (meaning the said lord G.) *is a worthless fellow, and a little great lord, and his word* (meaning the word of the said lord G.) *is not worth two pence: He* (meaning again the said lord G.) *has honour, but uses none.* And the said T. out of his further malice contriving and maliciously designing against the form of the said statute to raise a great scandal of and concerning the said lord G. whereby discords might arise between the said lord G. and other peers and great men, and other subjects of this realm, and to hurt, injure and impair the good name, credit, state, dignity and honour of the said lord G. afterwards, that is to say, on the 23d day of *March* in the 9th year aforesaid, at *W.* aforesaid, in another discourse which he the said T. then and there had with one T. C. of and concerning the said lord G. in the presence and hearing of divers other of his majesty's faithful subjects, falsely and maliciously spoke, related, published, and with a loud voice declared of and concerning the said lord G. the false, scandalous and defamatory words here next following, that is to say, *He, &c.* And also the further false, scandalous and defa-

defamatory words here next following, *It is true, &c.* By reason of the speaking, relating, publishing and declaring of which said several false, scandalous and defamatory words, the said L. G. is hurt in his reputation, honour and dignity; and the said lord G. hath lost the grace, good opinion and estimation of his present majesty, and the peers of this realm; and divers rumours and scandals amongst the peers of this realm, by the occasion aforesaid, are raised and divulged, and discords thereupon by the occasion aforesaid are risen between the said lord G. and the peers and great men, and other subjects of this realm, and daily more and more are likely to arise, to the great disturbance of the publick tranquillity of this realm, in contempt of his present majesty, and to the great scandal and detriment of the said lord G. and against the form of the statute, to the damage of the said lord G. who as well, &c. of 5000 l. And thereupon the said lord G. as well for our said lord the king as for himself brings this suit, &c.

Middlesex, to wit, J. C. late of, &c. was *Declaration in*
 attached to answer to F. D. in a plea of *case for slan-*
 trespass upon the case, &c. *derous words*
And where-
 upon the said F. by S. N. his attorney *spoken of a*
 complains, *That whereas* he the said F. is *charging the*
 a good, true, pious, faithful and honest *defendant with*
 subject of this kingdom, and as a good, *theft, special*
 true, pious, faithful and honest subject *damage laid.*
 of this kingdom, from the time of his *C. B.*
 nativity

nativity hitherto hath demeaned and behaved himself, and until the time of the speaking of the false and scandalous words first hereafter mentioned to have been spoken by the said J. was accounted, esteemed and reputed a person of good name, fame, condition, conversation and reputation, and as a faithful and honest subject of this kingdom he the said F. D. always kept himself free and clear from theft, robbery, and all such enormous crimes; and by reason of his said good name, fame, condition, conversation and reputation, the said F. D. had obtained the love and good will of all his neighbours, and other faithful and honest subjects of this kingdom: *And whereas* he the said F. now uses and exercises, and for divers years now last past has used and exercised the trade of a carpenter, and thereby and by reason of his good name, credit and reputation therein, hath during the time aforesaid got and endeavoured to get his livelihood in support of himself and family: *Nevertheless* the said J. well knowing the premisses, but contriving and maliciously intending to deprive him the said F. of his good name, fame, credit, esteem and reputation aforesaid, and to bring him into scandal, reproach and displeasure, as well amongst all grave and venerable persons, as other faithful and honest subjects of this kingdom, and especially among his friends and customers, and to hinder him in the exercise

ercise of his said trade, and also to cause the said *F. D.* to be punished according to the laws and statutes of this kingdom, made and provided against those who commit felonies and robberies, on the 11th day of *January* in the year of our Lord 1734. at *Uxbridge* in the said county, in a certain discourse which the said *J.* then and there had with divers subjects of this kingdom, of and concerning the said *F.* did falsely and maliciously, in the presence and hearing of those subjects, speak and utter of and concerning the said *F.* certain false, scandalous and defamatory words, to wit, *He* (meaning the said *T. D.*) *has broke open my brother T.'s scrutore, and robbed him* (meaning *T. C.* brother of him the said *J.*) *of 27 guineas and some half-pence.* And the said *J.* of his further malice premeditated against the said *F.* afterwards, to wit, on the same day and year, at *U.* aforesaid, in a certain other discourse which the said *J.* then and there had with divers other subjects of this kingdom, of and concerning the said *F.* did falsely and maliciously, in the presence and hearing of those subjects, speak and utter of and concerning the said *F. D.* certain other false, scandalous and defamatory words, to wit, *The rogue* (meaning the said *F.*) *has robbed my house,* (meaning the dwelling-house of the said *J.*) *and broke open my brother's scrutore, and has took some money from him,* (meaning the aforesaid *T. C.* the said *J.*'s brother)

ther) and I (meaning again the said *J.*) will swear it: Whereas in truth the said *F.* is not guilty of any offence by the said several scandalous words laid to his charge.

*Special damage
laid,*

By reason of which speaking of the said several false, scandalous and defamatory words, the said *F.* is greatly scandalized, hurt and injured in his good name, fame, credit, esteem and reputation aforesaid, and is greatly hurt and damnified in his said business, insomuch that divers persons, to wit, *G. W.* and *J. G.* who were used and accustomed to employ the said *F.* in his said trade and business of a carpenter, by reason of speaking the said words, suspect him to be guilty of the crimes thereby laid to his charge, and have refused, and still do more and more refuse to employ him in his said business, or to have any dealings or concerns whatsoever with him; and the said *F.* is very much prejudiced and hindered in the exercise of his said trade, to the damage of the said *F.* 500 *l.* And thereupon he bringeth suit, &c.

*Declaration in
case for scan-
dalous words
spoken of
an attorney,
charging him
with perjury.
C. B.*

Leicester, to wit, *W. S.* late of *W.* in the county aforesaid, yeoman, was attached by the writ of our lord the king of privilege, issuing out of the court here, to answer *T. B.* Gent. one of the attornies of the court of our lord the king of the bench here, of a plea of trespass upon the case, &c. And whereupon the said *T.* in his proper person complains, wherefore *whereas* the said *T.* is a good, true and faithful subject

subject of our lord the present king, and of good name, fame and condition, and from the time of his birth hitherto has behaved and demeaned himself as a good, true and faithful subject of our lord the present king, and for all that time has remained without any kind of falsity, perjury, or stain of any hurtful crime: And also whereas the said *T.* for divers years now last past, was and still is one of the attornies of the court of our lord the present king of the bench here, and has hitherto behaved and demeaned himself rightly and honestly according to his ability and skill in all causes of his clients, whose attorney the said *T.* has been in the said court here, and by reason of the faithful and honest exercise of his office of an attorney in the same court of the bench, and prosecuting the causes of his clients, justly and honestly, gained and acquired many fees and much profit for the support and maintenance of himself and his family, and was daily likely to gain more and more: *Nevertheless* the said *W.* not ignorant of the premisses, but contriving and maliciously intending unjustly to injure the said *T.* and to hurt, take away and injure his good name, fame, credit and esteem, and to bring the said *T.* into ignominy and infamy, as well amongst his neighbours as amongst all his clients, and to deprive the said *T.* of his gain and profit which he might afterwards gain by reason of the honest exercise of his office
of

of an attorney, on the 20th day of *February* in the 30th year of the reign of our said lord the present king, at the borough of *L.* having communication and discourse with divers subjects of our said lord the king, concerning the said *T.* and the exercise of his said office of an attorney, openly and publickly said, spoke and published these false, opprobrious and malicious words following, to wit, *He (meaning the said T.) is a perjured knave and a rogue, and I (meaning himself the said W.) will prove it.* By pretext of speaking and publishing of which said false, opprobrious and malicious words, the said *T.* is not only greatly hurt and injured in his good name, fame and reputation, amongst many honourable and venerable persons, as other subjects of our said lord the present king, whose attorney the said *T.* then and before was in the said court of the bench, but also the said *T.* lost divers sums of money which the said *T.* used to get and gain of his clients for the honest exercise of his said office of an attorney, and by that occasion divers of his clients and other persons with whom the said *T.* before that time used to converse, have intirely left the said *T.* Wherefore he says that he is injured, and has damage to the value of 100*l.* And thereupon he brings suit, &c.

*Plea, as to
part not guilty.*

And the said W. by F. S. his attorney comes and defends the force and injury

I

when,

when, &c. And as to the words (*And a rogue*) above specified in the declaration of the said *T.* the said *W.* says, that he is not guilty of speaking and publishing the same, as the said *T.* above complains against him; And of this he puts himself upon the country: And the said *T.* does *Issue.* so likewise, &c. And as to the speaking and publishing the residue of the words expressed in the same declaration, the said *W.* says that the said *T.* ought not to have his said action thereupon against him, because he says, that long before the time of speaking and publishing those words, the said *W.* in the court of our lord the present king of the bench at *W.* in the county of *M.* and before the then justices of our said lord the king of the same court, impleaded one *F. C.* by the name of *F. C.* late of *H.* in the county aforesaid, weaver, for that the said *F.* with force and arms had broke and entered the said close of the said *W.* at *H.* aforesaid, and had broke and spoiled the gates of the said *W.* there lately erected, to the value of 40 s. and had broke and spoiled a pump of the said *W.* there also lately being, to the value of 60 s. and had taken and carried away the water of the said *W.* to the value of 10 s. there lately found, and had done other injuries to him, to the great damage of the said *W.* and against the peace of our lord the present king, &c. And whereupon the said *W.* by *J. M.* his attorney complained, that the

As to the residue, justifies.

A suit brought by defendant.

The declaration.

Plea.

First issue.

the said *F.* on the 20th day of *December* in the 21st year of the reign of our lord the present king, with force and arms, &c. had broke and entered the close of the said *W.* called *Home-yard* at *H.* [the whole declaration recited] And thereupon he brought suit, &c. To which said suit the said *F.* by *J. C.* his attorney appeared in the same court of our said lord the king of the bench, before the justices of our said lord the king of the same court, and in the same court afterwards, to wit, in the term of the *Holy Trinity* next ensuing, by his said attorney came and defended the force and injury when, &c. And as to the whole trespass aforesaid, except the breaking the close, and taking and carrying away the said water, said that he was in nothing guilty thereof, as the said *W.* above complained against him; And of that he put himself upon the country: And the said *W.* did so likewise, &c. And as to the said breaking the close, and taking and carrying away the said water, above supposed to be done, the said *F.* said that the said *W.* ought not to have his said action thereupon against him, &c. because he said, that before the said time in which the said trespass was above supposed to be done, to wit, on the 1st day of *December* in the 21st year aforesaid, and from that time until the said time, and at the said time in which, &c. there was a great drought and want of water in the town of *H.* aforesaid, and the said

W. at the said time in which, *Ec.* being a parishioner of the said town, and a neighbour to the said *F.* and being willing to supply the said *W.* in his wants with water from the said pump of the said *W.* gave the said *F.* licence to enter into the said close called *Home-yard*, and from the said pump to take and carry away the said water to his own use; by virtue of which licence the said *F.* at the said time in which, *Ec.* entered into the said close of the said *W.* called *Home-yard*, and from the said pump took and carried away the said water, as it was lawful for him to do; which was the said trespass, as to the breaking the said close, and taking and carrying away the said water, whereof the said *W.* then above complained against him; And this he was ready to verify: Wherefore he prayed judgment if the said *W.* ought to have his said action thereupon against him, *Ec.* And the said *W.* as to the said plea of the said *F.* as to breaking the said close, and taking and carrying away the said water above pleaded in bar, said that he ought not by any thing therein alledged to be barred from having his said action against the said *F.* because he said that he the said *W.* did not give to the said *F.* licence to enter into the said close, and to take and carry away the said water from the said pump to his own proper use, as the said *F.* had above in pleading alledged; And he prayed that this might be inquired of by

Second issue.
Venire a-
warded.

Nisi Prius.

Trial.

the country : *And* the said *F.* did so likewise, &c. *Therefore*, as well to try the said issue as the said other issue joined between the said parties, the sheriff was commanded to cause to come before the said justices of our lord the king of the bench aforesaid, from the day of the *Holy Trinity* in three weeks, twelve, &c. By whom, &c. And who neither, &c. To take cognizance, &c. Because as well, &c. *At which day* the jury between the said parties in the plea aforesaid was thereupon respited between them until from the day of *St. Michael* in three weeks then next ensuing, unless the justices of our lord the present king assigned to take the assizes in the county aforesaid by form of the statute, &c. should first come on *Thursday* the 14th day of *July* then next ensuing, at the castle of *L.* in the county aforesaid, for default of the jurors, because none of them came. *At which* said *Thursday* the 14th day of *July* in the 22d year aforesaid, at the castle of *L.* aforesaid, before Sir *T. T.* Knt. and Sir *H. W.* Knt. justices of our lord the king of the bench, and justices of our said lord the king assigned to take the assizes in the county of *L.* aforesaid, by the form of the statute, &c. came as well the said *W.* as the said *F.* by their attornies aforesaid; And the jurors of that jury, to wit, [*naming them*] being demanded, also came, and to speak the truth of the premisses were chosen, tried and sworn. *Upon which* the said *T. B.*

T. B. being then and there produced as *Plaintiff, produced as a witness, gave false evidence.* a witness on the behalf of the said *F.* for decrease of the damages of the said *W. S.* in the said second issue, and then and there before the justices and jury aforesaid being charged and sworn upon the Holy Evangelists of God to give to the said jury true evidence concerning the said issue between the said parties, the said *T.* then and there upon his oath voluntarily, falsely and corruptly, to the said jury gave in evidence, deposed and swore, that all the town-wells in *H.* aforesaid, at the time the said trespass was done, were dried up; when in truth, at the time the said trespass was done, there were in *H.* aforesaid four town-wells, to wit, the conduit, the sweap-well, *Ward's* pump and *Worth's* pump, which then run with water, and were not dried up; whereby the said *T. B.* then and there committed voluntary perjury; and by reason thereof the said *W. S.* afterwards, to wit, on the 20th day of *February* in the 30th year of the reign of our lord the present king, at the borough of *L.* aforesaid, spoke and published of the said *T. B.* the said residue of the words in the declaration of the said *T.* specified, to wit, *He is a perjured knave, and I will prove it,* as he lawfully might; And this he is ready to verify: Wherefore he prays judgment, if the said *T.* ought to have his said action thereupon against him, &c.

*Declaration in
case for a ma-
licious prosecu-
tion in indict-
ing plaintiff's
wife. C. B.*

Middlesex, to wit, *W. M.* late of, &c. and *B.* his wife, were attached to answer to *J. S.* of a plea of trespass upon the case, &c. And whereupon the said *J.* by *J. J.* his attorney complaineth, *that* the said *B.* contriving, and maliciously and wickedly intending unjustly to grieve, oppress, weary and impoverish him the said *J.* and put him to great expence, without any reasonable cause, and of her mere malice conceived against the said *J.* and *M.* his wife, at his present majesty's general sessions of the peace held at *Hicks's Hall* in *St. John's Street*, in and for the county of *Middlesex*, upon *Monday* the 28th day of *August* in the 6th year of his present majesty's reign, before *E. B.* Esq; *T. R.* Bart. *J. G.* Knt. *J. C.* Esq; and others their companions, his said majesty's justices assigned to keep the peace in the said county of *M.* and also to hear and determine divers felonies, trespasses and misdemeanors committed in the said county, falsely and maliciously caused and procured *M.* the wife of the said *J.* to be indicted by the name of *M.* the wife of *J. S.* late of the parish of *St. Paul Covent-Garden*, for that she the said *M.* [as in the indictment] crown and dignity: And the said indictment was so falsely and maliciously prosecuted, and caused to be prosecuted against the said *M.* by her the said *B.* and at her instigation until afterwards, to wit, at his said majesty's
general

general sessions of the peace held at *H. H.* afore-
 said, in and for the said county of *M.* upon *Monday* the 4th day of *December*
 in the said 6th year of his present ma-
 jesty's reign, before *E. B. J. M. T. A.* Esqs;
 and others their companions, then his said
 majesty's justices assigned to keep the peace
 in the said county, and also to hear and
 determine divers felonies, trespasses, and
 other misdemeanors committed in the said
 county, the said *M.* was duly acquit-
 ted of the premisses in the said indictment
 above imputed to her, by a jury of the
 county, and the judgment of the said
 court: By reason whereof he the said *J.*
 the same day and year last mentioned,
 and many times as well before as after-
 wards, at *W.* in the said county of *M.*
 was forced to lay out divers sums of mo-
 ney in the defence of the said *M.* his wife
 in this behalf, and to undergo great
 trouble and labour about the same, to the
 damage of the said *J.* of 9 l. 19 s. And
 thereupon he bringeth this suit, &c. And *Averment of*
 the said *J.* avers, that the said *W. M.* *the identity of*
 named in the said declaration, and *W. M.* *the parties.*
 named in the said indictment, is one and
 the same person, and not any other or
 different person; and that the said *B.*
 named in the said declaration, and the
 said *B.* named in the said indictment,
 is one and the same person, and not any
 other or different person.

*Declaration in
case against a
praetiser, for
suing out a
writ against
the plaintiff in
the name of
C. K. without
C. K.'s consent.
B. R.*

Middlesex, to wit, *P. S. Esq;* complains of *H. E. Gent.* in the custody of the marshal of the *Marshalsea*, &c. For that, to wit, that the said *H.* contriving and maliciously intending unjustly to vex, disquiet and greatly injure the said *P.* on the 12th day of *February* in the term of *St. Hilary*, in the 10th year of the reign of our sovereign lady the present queen, prosecuted out of the court of our said lady the queen of Common bench at *W.* in the county of *M.* in the name of *C. K.* but without his assent, consent, agreement or notice, a certain writ of our said lady the queen, of *Capias ad respondendum* against the said *P.* by the name of *P. S.* late of the *Middle Temple*, *Gent.* directed to the sheriff of the said county of *M.* whereby it was commanded to him that the said then sheriff should take the said *P.* if he should be found in his bailiwick, and him safely keep, so that he might have his body before the justices of our said lady the queen at *W.* from the day of *Easter* in 15 days then next ensuing, to answer the said *C. K.* in a certain plea of trespass on the case, upon promise in the same writ specified, and for not performing thereof, to the damage of the said *C. K.* of 20 *l.* By pretext of which said writ the then sheriff of the said county of *M.* after the issuing the said writ, and before the return thereof, to wit, on the 8th day of *April* in the 11th year

year of the reign of our said lady the present queen, at the parish of *St. Clement Danes* in the said county of *M.* at the prosecution and solicitation of the said *H.* and without the assent or notice of the said *C.* took and arrested the said *P.* by his body; and thereupon the said *H.* without the assent or notice of the said *C.* greatly injured the said *P.* to the damage of the said *P.* of 200 *l.* And thereupon he brings suit, &c.

Wilts. to wit, *E. D.* late of, &c. and *R. M.* late of, &c. were attached to answer to *J. G.* and *R. P.* assignees of the debts, goods and chattels of *S. L.* a bankrupt, according to the form of the statutes made concerning bankrupts, of a plea of trespass upon the case; And whereupon the said *J.* and *R.* by *S. S.* their attorney complain, *That* they the said *J.* and *R.* on the — day of — in the year of our Lord —, at *B.* in the said county of *W.* were possessed of thirty broad cloths, of the value of 600 *l.* as of their own proper goods and chattels (they being as aforesaid assignees of the debts, goods and chattels of the said bankrupt); And being thereof so possessed, they the said *J.* and *R.* the said thirty broad cloths out of their hands and possession casually lost and mislaid; which said thirty broad cloths afterwards, to wit, the day and year aforesaid, at *B.* aforesaid, came to the hands and possession of them the aforesaid *E.* and *R.* by finding; And tho' the aforesaid *E.* and

Declaration in case Sur trover, by assignees of the effects of a bankrupt, upon their own possession. C.B.

R. knew the aforesaid cloths to be the proper goods and chattels of the aforesaid J. and R. and to them, as assignees of the debts, goods and chattels of the aforesaid S. L. the bankrupt, of right to belong and appertain: Yet they the aforesaid E. and R. contriving and fraudulently intending the aforesaid J. and R. of the aforesaid cloths to deceive and defraud, have not delivered the aforesaid cloths or any of them to the aforesaid J. and R. altho' they have by them been often requested to deliver the same: But they the aforesaid E. and R. afterwards, to wit, the day and year aforesaid, at B. aforesaid, to their own proper use did convert and dispose of the aforesaid cloths, to the damage of them the aforesaid J. and R. 600 l. And thereupon they bring this suit, &c.

*Declaration in
case Sur tro-
ver for money.
C. B.*

Somersetshire, to wit, E. A. late of, &c. was attached to answer to M. B. widow, in a plea of trespass upon the case: And whereof the said M. by W. H. her attorney complains, That whereas the said M. on the 29th day of February in the year of our Lord 1736. at M. aforesaid was possessed of the monies following, to wit, six pieces of gold coin of this kingdom, commonly called *Jacobus's*, and twelve other pieces of another gold coin of this kingdom, commonly called *Carolus's*, of the value of 20 l. and of other 20 l. in monies, numbered as of her own proper monies; and being so possessed thereof, the said M.

M. afterwards, to wit, on the same day and year, at *M.* aforesaid, casually lost the said monies out of her hands and possession; which said monies afterwards, to wit, at the same time and place, came to the hands and possession of the said *E.* by finding them: Yet the said *E.* knowing the said monies to be the proper monies of the said *M.* and to her of right to belong and appertain, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *M.* of the monies aforesaid, hath not yet delivered her the said monies, tho' often requested so to do: But the said *E.* afterwards, to wit, at the same time and place, converted and disposed of the same to her own use; Whereby the said *M.* says she is prejudiced and damaged to the value of 50 *l.* And thereupon she brings her suit, &c.

London, to wit, *A. B.* late of, &c. and Declaration in *E.* his wife, were attached to answer *C. D.* ^{case Sur trover against} in a plea of trespass on the case, &c. And ^{baron and} whereupon the said *C.* by *W. R.* his attorney complains, *That whereas* the said ^{ver by the} *C.* on the — day of — in the year ^{wife whilst} of our Lord 1729. at *L.* aforesaid, in the ^{sole. C. B.} parish of *St. Bride's*, otherwise *Bridget*, in the ward of *Farringdon without*, was possessed of the goods and chattels following, namely, of one gold watch, &c. to the value of 200 *l.* as of his own goods and chattels; and being so possessed thereof, the said *C.* afterwards, to wit, the same

same day and year last above mentioned, at *L.* aforesaid, in the parish and ward aforesaid, casually was deprived of and lost those goods and chattels out of his hands and possession; which said goods and chattels afterwards, to wit, the same day and year last above mentioned, at *L.* aforesaid, in the parish and ward aforesaid, by finding came to the hands and possession of the said *E.* whilst she was single and unmarried: *Yet* the said *E.* whilst she was single and unmarried, and the said *A.* and *E.* after the celebration of the marriage between them, knowing those goods and chattels to be the proper goods and chattels of him the said *C.* and of right to belong and appertain to him the said *C.* *Nevertheless*, contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *C.* in this particular, hath not nor have (though often requested so to do) delivered those goods and chattels to the said *C.* but hath and have converted and disposed of those goods and chattels afterwards, to wit, the same day and year last above mentioned, at *L.* aforesaid, in the parish and ward aforesaid, to the proper use and advantage of her the said *E.* while she was single and unmarried, and to the proper use and advantage of them the said *A.* and *E.* after the celebration of their said marriage, namely, the — day of — in the year of our Lord 1735. at *L.* aforesaid, to the damage of the

the said C. 200 l. And thereupon he bringeth suit, &c.

Torkshire, to wit, J. H. late of the parish of N. in the county aforesaid, Esq; was attached to answer W. P. Esq; of a plea of trespass upon the case. And whereupon the said W. by T. L. his attorney complains that the said J. on the 14th day of May in the 32d year of the reign of our lord the present king, unjustly and maliciously broke, threw down and prostrated great part of a certain antient dam in and upon the river D. in the parish aforesaid, and thereby for a great time, to wit, from the said 14th day of May in the thirty-second year aforesaid, until the feast of St. Michael the Archangel then next ensuing diverted and hindred great part of the water of the said river from its antient and usual course to and towards a water corn-mill of the said W. situate upon the said river in the parish of O. M. whereby the said W. lost the benefit and profit of his said mill for the whole time aforesaid. Wherefore the said W. says, that he is injured, and has damage to the value of 100 l. And thereupon he brings suit, &c.

And the said J. by — his attorney comes and defends the force and injury, &c. and says, that the said W. ought not to have his said action thereupon against him, because he says, that before the time of breaking, throwing down, and prostrating the said dam, to wit, on the first day of May

Declaration in case for throwing down a dam, and diverting a water-course. C.B. Carth. 84. S.C. 3 Lev. 133. Skin. 65, 175. Comb. 9. 1 Show. 64. 2 Show. 243. 249. 3 Mod. 48.

Plea, the dam was on defendant's freehold.

May in the 31st year of the reign of our lord the present king, he the said *J.* was seised in his demesne, as of fee, of and in an antient water corn-mill in *N.* aforesaid, and also of and in six acres of land next adjoining on the part to the said mill, in which six acres of land the said dam in the said declaration of the said *W.* mentioned, from the time to the contrary whereof the memory of man is not, had been made for conveying and directing a water-course from the said river *D.* to the said antient mill, and for the whole time aforesaid was repaired and maintained by the said *J.* and other tenants for the time being of the said antient mill without the contribution of any other person whatsoever, or for any other use than for conveying a water-course from the said river for wheeling about by the fall of the said water, and turning the wheels of his said antient mill. And the said *J.* further says, That the said antient mill on the said first day of *May* in the 31st year aforesaid was by accident intirely burnt and destroyed by fire. And because the said *J.* did not intend to rebuild the said antient mill the said *J.* afterwards, *to wit*, on the said 14th day of *May* in the 32d year aforesaid, broke, threw down and prostrated great part of the said dam, being built in and upon the said six acres of land, the freehold of the said *J.* and disposed and converted the stones and lime coming therefrom to his own proper use, as it was

was lawful for him to do. Which is the same. And this, &c.

London, to wit, O. J. late of, &c. was Declaration in attached to answer unto J. S. of a plea of *case for selling* trespass on the case, &c. And thereupon *an unsound* the said J. by G. H. his attorney complains, *horse, war-* That *whereas* the said J. on the 16th day *ranting him to* of *be found.* July in the year of our Lord 1735. at C. B. London, to wit, in the parish of St. Mary le Bow in the ward of Cheap bargained with the said O. to buy of the said O. a certain gelding of the said O.'s, and the said O. then and there well knowing the said gelding to be unsound, and labouring under and afflicted with a certain distemper called the *Glanders*, by warranting the said gelding to be sound in all respects, then and there falsely and fraudulently bargained and sold the said gelding, as and for a gelding sound in all respects, to the said J. for a large sum of money, to wit, for 5 l. 5 s. which said gelding was then and there unsound, and afflicted with and labouring under the said distemper called the *Glanders*, and so always afterwards there remained: And thus the said O. on the said 16th day of July in the year aforesaid, at L. aforesaid, in the parish and ward aforesaid, falsely and fraudulently deceived the said J. to the said J.'s damage of 20 l. And thereupon he brings his suit, &c.

Chal-

Challenge.

Challenge at Nisi prius to the array of the panel, because the plaintiff was undersheriff, and arrayed the panel.

*S*uffolk, to wit: *And* now at this day, that is to say, *Friday* the 27th day of *August* in the 10th year of the reign of the said king, at *Bury St. Edmund's* aforesaid, come the aforesaid *A.* in his proper person, and the said *S.* by his said attorney, and the jurors impanelled in this cause are demanded and came, and thereupon the aforesaid *S.* challengeth the array of the panel aforesaid, because he saith that the said panel was arrayed by the said *A.* now and at the time of the said arrayment made under-sheriff of the said county of *S.* and deputy of *J. C.* Esq; sheriff of the same county; And this the said *S.* is ready to verify: Wherefore he prays the judgment of this court thereupon, and that the said panel may be quashed, &c.

T. Dixon.

Covenant.

Declaration in covenant. C.B.

*M*iddlesex, to wit, *G. F.* late of *Cavendish-Square* in the said county of *M.* Esq; otherwise called the honourable *G. F.* Esq; lieutenant-general of the island of *St. Christopher*, was summoned to answer to *T. B.* in a plea, that he keep with him the covenant made between them, according to the force, form and effect of certain articles of agreement thereof made between the said *T. B.* and the said *G. F.*

and *M. W.* and *J. A.* &c. And where-
upon the said *T. B.* by *R. B.* the younger
his attorney saith, that *whereas* by cer-
tain articles of agreement indented and
made at *W.* in the said county of *M.* on
the 17th day of *January* in the year of
our Lord 1738. between the said *T. B.* of
R. in the county of *C.* miner, of the one
part, and the said *G. F. M. W.* and *J. A.*
by the names of the honourable *G. F. Esq;*
lieutenant general of the island of *St.*
Christopher's, *M. W.* of the city of *Bristol*,
whitawer, and *J. A.* of the island of *Span-*
ish Town, surgeon, as well on behalf of
themselves, as others their copartners and
sharers of and in certain mines and mi-
neral works in the island of *Spanish Town*
in the *British* leeward *Caribbee* islands in
America, one part of which said articles, *Proferet.*
sealed with the seal of the said *G. F.* the
said *T. B.* brings here into court, bearing
date the same day and year, the said *T. B.*
for and in consideration of the wages or
salary therein mentioned, did covenant
and agree to and with the said *G. F. M. W.*
and *J. A.* their and each of their execu-
tors, administrators and assigns, in manner
following, to wit, *That* the said *T. B.* from
time to time, and at all times during the
term of seven years, to be, commence
and be accounted from the time of his the
said *T. B.*'s arrival at the island of *Spanish*
Town aforesaid, should and would well
and faithfully, and to the utmost of his
skill and judgment, work for and serve the
the

the said *G. F. M. W.* and *J. A.* and other their copartners, their and each of their executors, administrators and assigns, as overseer and director in the sinking and working their copper, and other mines and mineral works, lying and being in the island of *Spanish Town* aforesaid, or in any other the *British* leeward *Caribbee* islands aforesaid, and do and perform business relating to the said mines, and the produce thereof, as they the said *G. F. M. W.* and *J. A.* and other their copartners, any or either of them, should from time to time direct and appoint: *And* also that he the said *T. B.* should not nor would, without leave first had and obtained, absent himself from the service aforesaid, nor voluntarily nor negligently waste or destroy any the goods, wares or materials of the said *G. F. M. W.* and *J. A.* and their said copartners, but in and concerning all and singular the said business and service aforesaid to be true and faithful, and do and perform the same according to the best of his knowledge, and to the utmost benefit and advantage of the said *G. F. M. W.* and *J. A.* and their said copartners, their executors, administrators and assigns. *And* in consideration of the premises, the said *G. F. M. W.* and *J. A.* jointly and severally for themselves and their said copartners, and their and each of their executors and administrators, did covenant, promise and agree, to and with the said *T. B.* his executors and

administrators, by the said articles in manner following; that is to say, *That* they the said *G. F. M. W.* and *J. A.* and their copartners, some or one of them, or some or one of their executors or administrators, should and would pay unto the said *T. B.* his executors and administrators, for the first year of the said term before mentioned, the sum of 20 *l.* of lawful *British* money, and for every other year of the said term of seven years the sum of 30 *l.* of like lawful money, and so proportionably, as salary or wages for the work and service to be by him done and performed as aforesaid; *And* also pay and allow him 5 *s.* per ton for every ton of copper which during the said term should be raised and dressed by the direction and assistance of him the said *T. B.* All which said wages and monies were to be paid and payable quarterly, by equal portions; *And* likewise find and provide him competent and sufficient meat, drink, washing and lodging, during the said term. *And* it was agreed by and between all and singular the said parties, that in case the said *G. F. M. W.* and *J. A.* and other their copartners, should be minded and desirous to determine and make void the said articles, at the expiration of one year from the commencement thereof, or at any time afterwards during the said term, and should give to the said *T. B.* one month's notice thereof in writing, then and after the expiration of such one month, the

said term thereby contracted for, as well as the said articles, should cease and be void; any thing before contained to the contrary notwithstanding. *And* it was agreed by and between the said parties, that the said *G. F. M. W.* and *J. A.* their executors and administrators, some or one of them should and would at their expence, costs and charges, find and provide a passage for the said *T. B.* to the said mines in *Spanish Town* aforesaid; and if they dismissed him from their service before the expiration of the said term thereby contracted for, to return him back to *England* again expence-free, if he should chuse to return at the time of their so dismissing him, as in and by the said articles of agreement more fully appears.

First breach.

And although the said *T.* in pursuance of the said articles of agreement, afterwards, to wit, on the 21st day of *August* in the year of our Lord 1739. arrived at the said island of *Spanish Town* in foreign parts, and did there well and faithfully, and to the utmost of his skill and judgment, work for and serve the said *G. M.* and *J.* and their copartners, as overseer and director in the sinking and working their copper and other mines and mineral works lying and being in the island of *Spanish Town* aforesaid, and other the *British Caribbee islands* aforesaid, and did and performed business relating to the said mines and the produce thereof, as they the said *G. M.* and *J.* and other their copartners did

did from time to time direct and appoint, for a certain time, to wit, for the space of one year and a half then next following; by reason whereof a certain sum of money, to wit, the sum of 35 *l.* of lawful money of *Great Britain*, became due and payable to the said *T.* for his salary and wages aforesaid: *Nevertheless* the said *G. M.* and *J.* or any of them, or their said copartners or any of them, did not pay to the said *T.* the said 35 *l.* or any part thereof, but wholly neglected and refused to pay the same, and the said 35 *l.* are still due and in arrear to the said *T.*

And the said *T.* further says, that the said *G. M.* and *J.* or any of them, or their said copartners or any of them, during the said service of the said *T.* or any part thereof, did not find and provide for him competent and sufficient meat, drink, washing and lodging, or any meat, drink, washing or lodging whatsoever, according to the form and effect of the said covenant of the said *G.* so made with the said *T.* in that respect as aforesaid, but neglected so to do, contrary to the form and effect of that covenant. *Second breach*

And the said *T.* further says, that during the said time that he the said *T.* was in the said service as aforesaid, thirteen tons of copper ore was raised and dressed in the said mines and mineral works in the said island of *Spanish Town*, by the direction and assistance of him the said *T.* by reason whereof 65 *s.* of lawful money of *Great Britain*

became due and payable to the said *T.* to wit, 5 s. for each of those thirteen tons of oar: *Nevertheless* the said *G. M.* and *J.* did not, nor did any of them pay to the said *T.* the said 65 s. or any part thereof, according to the form and effect of the said covenant of the said *G.* so made with the said *T.* in that respect as aforesaid, but wholly neglected to pay the same, and still refuses to pay the same to the said *T.* contrary to the form and effect of

Fourth breach. that covenant. *And* the said *T.* says, that the said *G. M.* and *J.* did not, nor did any of them find and provide at their or any of their expence, costs and charges, a passage for the said *T.* to the said mines in *Spanish* town aforesaid, according to the form and effect of the said covenant of the said *G.* so made with the said *T.* in that respect as aforesaid, but neglected so to do, contrary to the form and effect of that covenant. *And* the said *T.* further says, that although the said *G. M.* and *J.* at the end of the said one year and an half dismissed the said *T.* from their said service in the island of *Spanish Town* aforesaid; and although he the said *T.* then and there upon his said dismissal gave notice to the said *G. M.* and *J.* that he was minded and willing to return back to *England*, and then and there requested them to return him back to *England* expence-free, according to the form and effect of the said covenant of the said *G.* so made with the said *T.* in that respect

Fifth breach.

as aforesaid: *Nevertheless* the said G. M. and J. did not, nor did any of them return the said T. back to *England* expence-free, according to the form and effect of the said covenant of the said G. M. and J. so made with the said T. in that respect as aforesaid, but neglected and refused so to do, contrary to the form and effect of that covenant: *And* so the said T. says that the said G. (although often requested) has not kept with the said T. his said covenant so made with him the said T. in that respect as aforesaid, but has broke it, and has hitherto wholly denied and still denies to keep the same with the said T. Whereby the said T. says that he is injured, and hath damage to the value of 200 l. And thereupon he brings suit, &c.

And the said G. by J. S. his attorney *Plea.* comes and defends the force and injury when, &c. and says that the said T. ought not to have or maintain his action aforesaid against him; *Because*, as to the said *As to the first* breach of covenant by the said T. first *breach.* above assigned, the said G. says, that they the said G. M. and J. paid to the said T. all the salary and wages due to him from them, for the work and service by him done and performed, according to the form and effect of the said covenant in this behalf made, to wit, upon the 21st day of *February* in the year of our Lord 1740. at *W.* aforesaid: And of this he puts himself upon the country. *And as As to the second* as to the said breach of covenant secondly *cond breach.*

above assigned, the said G. says that the said G. M. and J. did during all the time that the said T. continued in the said service, find and provide for him competent and sufficient meat, drink, washing and lodging, according to the form and effect of the said covenant in this behalf made:

*As to the third
breach.*

And of this the said G. puts himself upon the country. And as to the said breach of covenant thirdly above assigned, the said G. says, that the said G. M. and J. paid and allowed to the said T. 5 s. per ton for every ton of copper oar which was raised and dressed in the said mines and mineral works in the said articles mentioned, by the direction and assistance of the said T. according to the form and effect of the said covenant in this behalf made, to wit, upon the said 21st day of February in the said year 1740. at W. aforesaid: And of this he puts himself

*As to the fourth
breach.*

upon the country. And as to the said breach of covenant fourthly above assigned, the said G. says, that the said G. M. and J. did find and provide at their own expence, costs and charges, a passage for the said T. to the said mines in Spanish Town aforesaid, according to the form and effect of the said covenant in this behalf made, to wit, upon the 21st day of May in the said year of our Lord 1739. at W. aforesaid: And of this the said G.

*As to the fifth
breach.*

puts himself upon the country. And as to the said breach of covenant lastly above assigned, the said G. says, that the said G.

G. M. and J. at the end of the said one year and an half did not dismiss the said T. from their said service in the island of *Spanish Town* aforesaid, as the said T. hath by his said declaration above alledged: And of this also the said G. puts himself upon the country.

R. Draper.

Herefordshire, to wit, J. T. late of the parish of W. in the said county, husbandman, was summoned to answer to E. J. and M. J. in a plea, that he keep with them the covenant between them made, according to the force, form and effect of a certain indenture thereof between them made, &c. *And whereupon* the said E. and M. by R. M. their attorney say, That

Declaration in covenant on a lease, for not repairing, and for committing waste. C. B. Hil. 11 G. 2. ro. 1392.

whereas by a certain indenture made at the parish of W. aforesaid, on the 7th day of *February* in the year of our Lord 1732. between the said E. and M. by the names of E. J. and M. J. both of the parish of W. aforesaid in the county of H. aforesaid, spinsters, in trust and to the use of J. J. their nephew, being then under the age of twenty-one years, of the one part, and the said J. by the name of J. T. of the parish of W. aforesaid and county aforesaid, husbandman, of the other part, The counterpart of which said indenture, sealed with the seal of the said J. the said E. and M. bring here into court, bearing date the same day and year, the said E. and M. for the consideration therein mentioned, demised, granted, set and to farm let, unto the said J. his executors, admi-

Recital of lease.

Profert.

Demise.

Premises.

nistrators and assigns, All that messuage or tenement wherein the said *J.* then dwelt, situate, lying and being at *L.* in the several parishes of *W.* and *G.* in the county of *H.* aforesaid, together with the outhouses, barns, stables, sheepcotes, buildings, gardens and orchards, lands arable, meadow and pasture, coppice of wood, known by the several names of *M.* and *T.* (but the fore-parlour, and likewise one room or chamber in the said dwelling-house which was above the parlour, and also one part of the little garden wherein the stocks grew, were excepted and reserved to the use of the said *E.* and *M.* their heirs and assigns) together with all ways, waters, water-courses, easements, privileges, profits and appurtenances thereto belonging or in any wise appertaining, unto the said *J.* his

Habendum.

executors, administrators and assigns; *To have and to hold* all and singular the said dwelling-house or tenement, out-houses, barns, stables, sheepcotes, buildings, edifices, gardens and orchards, lands arable, meadow and pasture, with their and every of their appurtenances, as before in the said indenture mentioned to be demised to the aforesaid *J.* his executors, administrators and assigns, from the 2d day of *February* then last past, for and during and until the full end and term of four years, from thenceforth fully to be complete and ended: *Yielding and paying* therefore yearly and every year, during the aforesaid term, unto the said *E.* and *M.* their

Reddendum.

their heirs and assigns, the yearly rent or sum of 56 l. of lawful *English* money, to be paid at these two usual times of payment in the year, (that is to say) at and upon every 2d day of *February* and every 2d day of *August*, by even and equal parts or portions; the first payment to commence and take place at and upon the 2d day of *August* next ensuing the date of the said indenture. *And* it was by the *Covenants*, said indenture covenanted and agreed upon by and between the said parties above-mentioned, that they the said *E.* and *M.* their heirs and assigns, should and would before the feast-day of *St. Michael* the archangel next ensuing the date of the said indenture, at their own proper costs and charges well and sufficiently repair, amend and put the aforesaid premisses, by the said indenture granted, in a good and tenantable repair: *And* he the said *J.* did for himself, his executors, administrators and assigns, covenant, promise and agree, to and with the said *E.* and *M.* their heirs and assigns, that he the said *J.* his executors, administrators and assigns, should and would from time to time, and at all times during the term by the said indenture granted, at his or their own proper costs and charges well and sufficiently repair, amend, maintain, sustain, uphold and keep all and singular the said demised premisses, with their and every of their appurtenances, in so good and tenantable reparation and amendment:

And

Defendant entered.

First breach.

Second breach.

And that the said J. his executors, administrators and assigns, should not at any time during the said term commit, cause, procure or suffer to be committed or done any manner of wilful waste, spoil or destruction; in or upon the said demised premisses, in cutting down any timber-trees, (except what were necessary for the use of the said premisses) as by the said indenture more fully appears: *By virtue* of which demise the said J. entered into the said demised premisses with the appurtenances, and was possessed thereof for and during the said four years to him granted as aforesaid, to wit, until and upon the 2d day of *February* in the year of our Lord 1736. And altho' the said E. and M. before the said feast of St. *Michael* the archangel next after the date of the said indenture, at their own proper costs and charges did well and sufficiently repair, amend and put the aforesaid premisses by the said indenture granted in tenantable repair: *Nevertheless* the said J. from time to time, and at all times during the residue of the said term, did not well and sufficiently repair, amend, maintain, sustain, uphold and keep the said demised premisses in so good and tenantable reparation and amendment, according to the form and effect of the said covenant of the said J. so made with the said E. and M. in that respect as aforesaid. And the said E. and M. further say, that the said J. during the said term, to wit,

on

on the 1st day of *February* in the year of our Lord 1736. aforesaid, did wilfully commit waste, spoil and destruction, in and upon the said demised premisses, in cutting down timber-trees, to wit, 20 oaks, 30 ashes, and 40 elms, growing in and upon the said demised premisses, (other than what was necessary for the use of those premisses) and taking, carrying away and detaining the timber thereof, contrary to the form and effect of his said covenant so made with the said *E.* and *M.* in that respect as aforesaid: *And* so the said *J.* (altho' often requested) has not kept his said covenant so made as aforesaid with the said *E.* and *M.* but has broke it, and has hitherto wholly denied, and still doth deny to keep the same with the said *E.* and *M.* Whereby the said *E.* and *M.* say that they are injured, and have damage to the value of 40 *l.* And thereupon they bring suit, &c.

And the said *J.* by *T. R.* his attorney *Pla.* comes and defends the force and injury when, &c. and says that the said *E.* and *M.* ought not to have their said action against him, because, *As to the breach of* *As to the first breach.* covenant above supposed to be made in this, 'That altho' the said *E.* and *M.* before the said feast of *St. Michael* the archangel next after the date of the said indenture, at their own proper costs and charges, did well and sufficiently repair, amend and put the aforesaid premisses by the said indenture granted, in good and tenant-

tenantable repair: *Nevertheless* the said *J.* from time to time, and at all times during the residue of the said term, did not well and sufficiently repair, amend, maintain, sustain, uphold and keep the said demised premisses in so good and tenantable reparation and amendment, according to the form and effect of the said covenant of the said *J.* so made with the said *E.* and *M.* in that respect as aforesaid, he the said *J.* says, that the said *E.* and *M.* before the said feast-day of St. *Michael* the archangel next after the date of the said indenture, did not well and sufficiently repair, amend and put the aforesaid premisses by the said indenture granted in good and tenantable repair, as they the said *E.* and *M.* have by their said declaration above alledged: And hereupon he puts himself upon the country: And the said *E.* and *M.* do so likewise. And as to the breach of covenant above supposed to be made in this, that the said *J.* did commit wilful waste, spoil and destruction in and upon the said demised premisses, in cutting down the said timber-trees, growing in and upon the said demised premisses, (other than what were necessary for the use of those premisses) and taking, carrying away and detaining the timber thereof, contrary to the form and effect of the said covenant so made with the said *E.* and *M.* in that respect as aforesaid, the said *J.* says, that he the said *J.* did not commit the said waste, spoil or destruction,

Issue.

As to the second breach.

struction, in manner and form as the said *E. and M.* have by their said declaration above supposed; And hereupon he puts himself upon the country: *And the said Issue.* *E. and M.* do so likewise. *Therefore the Venire.* Sheriff is commanded that he cause to come in eight days from the purification of the blessed virgin *Mary* twelve, *&c.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Because as well, *&c.*

Hertfordshire, to wit, *T. H. Gent.* com-^{Declaration in} plains of *B. S.* widow, assignee of *R. F.*^{covenant a-} deceased, in the custody of the marshal^{gainst the as-} of the *Marshalsea* of our lord the king,^{signee of a les-} before the king himself, in a plea of breach^{see for years,} of covenant; *For that whereas* the said *T.*^{for non-pay-} by a certain indenture made at *Berkam-*^{ment of rent.} *stead St. Peter's* in the county of *Hertford*^{B. R.} afore-^{Recital of} said, in the life-time of the said *R.* lease.
to wit, on the 18th day of *August* in the year of our Lord 1735. between the said *T.* by the name of *T. H.* of *Berkamstead St. Peter's* afore-^{The Profert.} said in the county of *H.* afore-^{Demise.} said, *Gent.* of the one part, and the said *R.* by the name of *R. F.* of the same place surgeon, of the other part, *The* counterpart of which said indenture, sealed with the seal of the said *R.* the said *T.* brings here into court, bearing date the same day and year, for the consideration therein mentioned, *did* demise, lease, and *Demise.* to farm let, unto the said *R. F.* his executors, administrators and assigns, All that *Premises.* his messuage, tenement or dwelling-house, situate, standing and being in the high-street.

street of *Berkhamstead St. Peter's* aforesaid, then in the possession or occupation of the said *T. H.* his assignee or assigns, and adjoining to or lying next to the messuage or tenement of the said *T. H.* in possession of Mrs. *A. A.* on the east, and to the charity-school the gift of *T. B.* Esq; on the west, and also the range of buildings behind the thereby intended to be demised messuage, lying next to or abutting on the said school, and the stable and granaries over the same, with the gate-way and hay-loft over it, with free liberty of ingress, egress and regress, to and for the said *R. F.* his executors, administrators and assigns, servants, familiars and friends, at any time or times during the said demise, to come, go, pass and repass, in and by and through the gates next the street to the stable only with horses, or otherwise as occasion should require, he or they locking the said gates up on nights, together with all and every the yards, area's, walks, pounds-ways, waters, and appurtenances whatsoever, to the same premisses then belonging, used, or in any ways appertaining, then in the occupation of the said *T. H.* his assignee or assigns, and used with or reputed to belong to the same messuage or tenement (except and always reserved out of the said demise and lease full and free liberty of ingress, egress and regress, to and for the said Mrs. *A. A.* her executors, administrators or assigns, servants, familiars and friends, or the tenant

Exception.

nant for the time being of the said messuage wherein she dwells, with waggons, carts, carriages, or otherwise to carry in wood through the gateway thereby demised, and to pass and repass with dung to the dunghill, when and as often as she or they should have occasion, without any hindrance or interruption by the said *R. F.* his executors, administrators or assigns, by stopping or hindring the passage in the gateway, or otherwise; and also except to the said *T. H.* his heirs or assigns, the great stable, with the lofts over the same, and the granary over the said Mrs. *A. A.*'s woodhouse); *To have and to hold* Habendum. the said messuage, tenement or dwelling-house, and all other the aforesaid demised and leased premisses, and every part and parcel thereof, with their and every of their appurtenances, (except as before excepted) unto the said *R. F.* his executors, administrators and assigns, from the feast-day of *St. Michael* the archangel next ensuing the date of the said indenture, unto the full end and term of twelve years from thence next and immediately ensuing, and fully to be complete and ended: *Tielling* Reddendum. and paying therefore yearly and every year, for and during the said term of twelve years, unto the said *T. H.* his heirs and assigns, at or in the then dwelling-house of *E. W.* widow, in the parish of *N.* in the said county of *H.* the yearly rent or sum of 12 l. of lawful money of *Great Britain*, at two usual feasts or days of payment

payment in the year, that is to say, at the feast-day of the annunciation of the blessed virgin *Mary*, and *St. Michael* the archangel, by even and equal portions; the first payment thereof to begin and be made on the feast-day of the annunciation of the blessed virgin *Mary* next ensuing the commencement of the said indenture.

*Covenant to
pay the rent.*

And the said *R. F.* for himself, his heirs, executors, administrators and assigns, and for every of them, in and by the said indenture did covenant, promise and grant, to and with the said *T. H.* his heirs and assigns, and to and with every of them, in manner and form following; that is to say, that he the said *R. F.* his executors, administrators and assigns, or some of them, should and would well and truly pay, or cause to be paid unto the said *T. H.* his heirs or assigns, the said yearly rent or sum of 12 *l.* of good and lawful money of *Great Britain*, therein before reserved, at the times and place therein before mentioned or limited for the payment thereof, according to the true intent and meaning of the said indenture, as by the said indenture more fully appears. By virtue of which said demise thereof, the said *R.* entered into the said demised premises with the appurtenances, and was possessed thereof: And being so possessed thereof, afterwards, to wit, on the 1st day of *February* in the year of our Lord 1743. the said demised premises with the appurtenances, and all the estate,

Lessee enters.

Premises assigned to defendant.

right, title, interest and term of years of the said R. therein then to come and unexpired, came to the said B. by assignment. *By virtue* of which assignment thereof the said B. entered into the said demised and assigned premisses, with the appurtenances, and was and still is possessed thereof. *And being* so possessed thereof, she the said B. did not pay, or cause to be paid unto the said T. 6 l. of the said yearly rent of 12 l. which became due from the said B. to the said T. after the said assignment, for half a year of the said term, ending on the feast of St. Michael the archangel in the year of our Lord 1744. on that feast, according to the form and effect of the said covenant of the said R. so made with the said T. in that respect as aforesaid, or any part of the said 6 l. at any time hitherto, but the said 6 l. of the rent aforesaid still remain due and in arrear from the said B. to the said T. contrary to the form and effect of that covenant: *And so* the said T. says that the said B. after the said assignment so made to her as aforesaid, (although often requested) has not kept the said covenant of the said R. so made with the said T. in that respect as aforesaid, but has broke it, and has hitherto wholly refused, and still refuses to keep the same with the said T. to the damage of the said T. of 10 l. And thereupon he brings suit, &c.

Pledges to prosecute

{ J. D.
and
R. R.

Plea, that nothing of the premisses ever came to the defendant by assignment.

And the said B. by G. W. G. her attorney comes and defends the force and injury when, &c. and says that the said T. ought not to have or maintain his said action thereupon against her, because she says that nothing of the said demised premisses with the appurtenances ever came to the said B. by assignment, as the aforesaid T. by his declaration has above alledged; And this she is ready to verify: Wherefore she prays judgment, if the said T. ought to have or maintain his said action thereupon against her, &c. J. Lacy.

Replication, that the premisses did come to defendant by assignment.

And the said T. says, that he by any thing by the said B. in her said plea above alledged, ought not to be barred from having or maintaining his said action against her, because he says that the said demised premisses, with the appurtenances, did come to the said B. by assignment, as he has before alledged; And of this he puts himself upon the country: And the said B. does so likewise, &c. Therefore, &c. W. Wynne.

Debt.

Declaration in debt on the stat. 21 H. 8. c. 13. for non-residence. Lil. Ent. 151.

R. F. who as well, &c. complains of W. C. in the custody of the marshal, &c. of a plea, that he render to our said lord the king, and to the said R. who as well, &c. 70 l. of lawful money of England, which he owes to our said lord the king, and to the said R. who as well, &c. and unjustly detains, For that, that

that the said *W.* on the 1st day of *April* in the 4th year of the reign of our said lord the present king, and from that time continually afterwards, for the space of one whole year thence next ensuing, was and continued a spiritual and beneficed person, to wit, the said *W.* for the whole time aforesaid was and still is vicar of the vicarage of the parochial church of *M.* and beneficed in the same; and that the said *W.* for seven months together, in the year aforesaid, to be computed from the 1st day of *May* in the same year, was not personally resident or abiding at or on his said vicarage, nor in, at or upon any other his benefice, but the said *W.* voluntarily absented himself the said seven months from his said vicarage, and was not resident upon his said vicarage, nor in, at or upon any other benefice, contrary to the form of the statute in such case made and provided: *Whereby* an action accrued to the said *R.* who as well, *&c.* to demand and have of the said *W.* 70 *l.* to wit, 10 *l.* for every month committed by the said *W.* as aforesaid, contrary to the form of the said statute. *Yet* the said *W.* although often requested, *&c.* has not yet paid the said 70 *l.* to our said lord the king, and to the said *R.* who as well, *&c.* but has hitherto intirely refused, and still does refuse to pay them the same: Wherefore the said *R.* who as well, *&c.* says that he is injured, and has damage to the value of 20 *l.* And thereupon as

Actio accrevit,

well for our said lord the king as for himself he brings suit, &c.

*Declaration in
debt on the
stat. 2 E. 6.
c. 13. for not
setting forth
tithes. C. B.*

*Plaintiff far-
mer of the
tithes.*

*Defendant oc-
cupier of lands.*

Westmoreland, to wit, *J. S.* late of *N.* in the county aforesaid, husbandman, was summoned to answer *J. D. Esq;* of a plea, that he render to him 15*l.* which he owes to him, and unjustly detains from him, &c. And whereupon the said *J.* by *R. S.* his attorney saith, that *whereas* the said *J.* for two years last past and more, was and yet is farmer and tenant of all the tithes of corn and grain in the rectory of *K.* in the said county, belonging or appertaining to the said rectory, yearly growing, coming or renewing within the said parish of *K.* aforesaid, and the bounds and limits and tithable places of the said parish:

And *whereas* the said *J. S.* on the 30th day of *September* in the year of our Lord 1732. and from thence hitherto was the farmer, occupier and possessor of twenty acres of land, with the appurtenances, within the rectory and parish aforesaid, and the bounds, limits, and tithable places of the same parish, the tithes of corn and grain yearly growing, coming or renewing; of, in and from which said twenty acres of land, within forty years next before the statute made in the parliament of the lord *Edw. VI.* late king of *E.* held at *W.* in the 2d year of his reign, and provided for and concerning the payment of tithes, were of right yielded, and payable and paid to the owner of the rectory aforesaid, or his farmer of the said rectory

tory or of the tithes thereof for the time being, in their proper kinds. *And the* ^{*Sows the land with corn.*} said J. being so farmer, occupier and possessor of the said twenty acres of land, with the appurtenances; and the said J. being farmer of the said tithes as aforesaid, the said J. afterwards, to wit, the 1st day of *April* in the year of our Lord 1733. sowed the said twenty acres of land with oats, and at the time of corn-harvest then next following, to wit, the 20th day of *Reaps it.* *September* in the year of our Lord 1733. did cut and reap all the oats growing upon the said twenty acres of land, the tithes of which said oats so cut and reaped by him, did belong to the said J. as such farmer of the tithes aforesaid, and of right ought to have been yielded and paid to him: *Nevertheless* the said J. not regard- ^{*Does not set forth the tithes.*} ing the statute aforesaid, nor dreading the penalty therein contained, did not divide, sever or set out the tenth part of the oats aforesaid, or any part thereof, for the tithes thereof, nor did agree with the said J. being farmer of the said tithes as aforesaid, for the tithes of the said oats; but afterwards, to wit, the 28th day of *September* in the year of our Lord 1733. above-said, at the parish of K. aforesaid, did take and carry away all the said oats, coming in and upon the said twenty acres of land, by him cut and reaped as aforesaid, from the place where they grew and ought to have been tithed, without setting forth the tithes thereof, and without

*Value of the
tithes.*

any composition or agreement for the tithes thereof, had or made with the said *J.* being then farmer of the tithes as aforesaid, against the form of the statute aforesaid. And the said *J.* in fact says, that the same tithes or tenth part of the said oates so as aforesaid taken and carried away, at the time of such taking and carrying away thereof, were reasonably worth 5 *l.* Wherefore an action accrued to the said *J.* to demand and have of the said *J.* the aforesaid 15 *l.* for the treble value of the said tithes so taken and carried away by the said *J.* against the form of the statute aforesaid: *Nevertheless* the said *J.* (altho' often requested) hath not rendered the aforesaid 15 *l.* or any part thereof, to the said *J.* but hath hitherto altogether refused, and still doth refuse, to render the same to him, to the damage of the said *J.* of 10 *l.* And therefore he brings this suit, &c.

*Declaration in
debt on the
stat. of 2 & 3
E. 6. c. 13.
for not setting
forth tithes.*

*Plaintiff far-
mer of the
rectory.*

Gloucestershire, to wit, *J. V.* farmer of the rectory of *M.* in the county aforesaid, complains of *S. H.* in the custody of the marshal, &c. of a plea, that he render to him 6 *l.* of lawful money of *England*, which he owes him, and unjustly detains; For that, to wit, that whereas the said *J.* on the 25th day of *March* in the 2d year of the reign of our sovereign lord *James II.* now king of *England*, &c. and from that time continually hitherto, has been and still is farmer of the rectory impropriate of *M.* with the appurtenances, in the county

county aforesaid, and of all and singular the tithes to the said rectory in any manner belonging and appertaining, yearly coming, growing, renewing or happening within the said parish of *M.* in the county aforesaid, and the bounds, limits, and tithable places of the said parish. *And* Defendant occupier of, &c. the said *S.* on the 25th day of *March* in the 2d year aforesaid, and continually afterwards, from that time until the exhibiting of this bill, has been and now is the occupier and possessor of a close of meadow called *Foxwell's Wood*, containing by estimation thirteen acres, and of two acres of arable land in the north-field of *M.* aforesaid, and within the parish of *M.* aforesaid in the county aforesaid, and the bounds, limits, and tithable places of the said parish; *The* tithes of the grain and hay yearly growing, coming and renewing out of and from which said close of pasture and two acres of land, for forty years next before the making a certain act made in the parliament of *Edward VI.* late king, held at *W.* in the county of *M.* in the 2d year of his reign, made and provided for the true payment of tithes in their proper kinds and species, were of right due and payable to the rector of the said rectory, or to his farmer or deputy of the said rectory for the time being. *And* the said Defendant *S.* so as aforesaid, for the whole time aforesaid being occupier and possessor of the said close of meadow and two acres of land, and the said *J.* being so as aforesaid *plows the land and reaps the corn, &c.*

*Does not set
forth the tithes.*

said farmer of the said rectory, the said S. afterwards, to wit, on the said 25th day of *March* in the 2d year aforesaid, ploughed and sowed the said two acres of land with wheat; and afterwards, to wit, on the 6th day of *September* in the said 2d year of the reign of our said lord the present king, mowed and made into hay all the grass then growing in and upon the said close of pasture, and cut down all the wheat then growing in and upon the said two acres of land; the tithes of which said hay and wheat as aforesaid growing and coming out of and from the said close of meadow and the said two acres of land, of right belonged to the said J. as farmer of the said rectory, and ought of right to have been rendered and paid to him. Yet the said S. being a subject of our said lord the present king of this kingdom of *England*, no ways regarding the said statute, nor any ways fearing the penalties contained in the same, did not divide, separate, render and pay the tenth part of the said wheat and hay, or any parcel thereof, for the tithes of the same, nor any ways compounded or agreed with the said J. being so as aforesaid farmer of the said rectory, for the tithes of the same, or of any parcel thereof; but the said S. afterwards, to wit, on the 10th day of *October* in the 2d year aforesaid, then and there took and carried away all the grain and hay so as aforesaid growing and coming, and mowed
in

in that year upon the said close of meadow and two acres of land, from the said places where the said hay and wheat grew, without any putting out of the tenth part of the same, and without any composition or agreement had or made with the said *J.* for the tithes of the same, which tithes were then worth 40 s. of lawful money of *England*; *Whereby* an action accrued to the said *J.* to demand and have of the said *S.* the 6 l. aforesaid, being treble the value of the tithes of the said wheat and hay taken and carried away by the said *S.* as aforesaid, contrary to the form of the said statute: *Yet* the said *S.* altho' often requested, &c. has not yet paid the said 6 l. to the said *J.* But, &c.

*Per quod actio
accevit.*

Suffex, to wit, *S. A.* Gent. who sues in this behalf as well for our lord the king as for himself, complains of *T. F.* the elder, in the custody of the marshal of the *Mar-shalsea* of our lord the king, before the king himself, of a plea, that he render to our said lord the king, and to the said *S. A.* who as well, &c. 200 l. of lawful money of *England*, which he owes them, and unjustly detains; for that, *that* the said *T. F.* on the 20th day of *May* in the 34th year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. being above the age of sixteen years, and then and from thence continually afterwards, for the space of ten months thence next ensuing, an inhabitant, and dwelling within this kingdom of *England*, to wit,

at

*Declaration in
debt Qui tam,
&c. on the
stat. 29 Car. 2.
c. 7. for not
going to church.
i Bro. 91.
i Salk. 30,
373.*

at the parish of *All-Saints* in *Lewes* in the county aforefaid, did not repair, nor endeavour to repair to his parish-church of *All-Saints* in *Lewes* aforefaid, nor to any other church, chapel, or usual place of common prayer and preaching, or other divine service there used and administred according to the form of the statute in such case made and provided, but for the whole time aforefaid voluntarily and obstinately, without any lawful or reasonable cause or excuse, did forbear from the same, contrary to the form of the statute in such case made and provided: *Whereby* an action accrued, as well to our said lord the king, as to the said *S.* who as well, &c. do demand and have of the said *T.* the said 200 *l.* to wit, 20 *l.* for every month of the said ten months in which the said *T.* contrary to the form of the said statute absented himself as aforefaid from church, chapel, or place of common prayer and preaching, or other divine service there: Yet the said *T.* altho' often requested, &c. did not pay the said 200 *l.* to our said lord the king and the said *S.* who as well, &c. but has hitherto intirely refused, and still does refuse to pay them the same, to the damage of the said *S.* of 40 *l.* And thereupon as well for our said lord the king as for himself he brings suit, &c.

*Plea, Nil
debet.*

And the said *T. F.* by — his attorney comes and defends the force and injury when, &c. and says, that he does not owe to our said lord the king and the said

S.

S. who as well, &c. the said 200 l. nor any part thereof, in manner and form as the said S. who as well, &c. above complains against him; And of this he puts himself upon the country: *And the Issue.*
 said S. who as well, &c. does so likewise.

Therefore let a jury thereupon come before Venire a-
 our lord the king at W. on *Wednesday* ^{warded.}
 next after three weeks of the *Holy Trinity*;
 And who neither, &c. To recognize, &c.
 Because as well, &c. The same day is
 given to the parties aforesaid at the same
 place, &c.

Surrey, to wit, *J. F. Gent.* complains *Declaration in*
 of *W. L. Esq;* marshal of the *Marshalsea* of ^{debt against a}
 the court of our lord and lady the present ^{gaoler, on the}
 king and queen, before the said king and ^{Habeas corpus}
 queen present here in court, in his proper ^{act, 31 Car. 2.}
 person, of a plea, that he render to him ^{c. 2. for deny-}
 100 l. of lawful money of *England*, which ^{ing a copy of a}
 he owes him, and unjustly detains; for ^{commitment.}
 that, to wit, *That whereas* after the 1st
 day of *July* in the year of our Lord 1679.
 he the said *J. F.* in vacation-time and out
 of term, to wit, on the 20th day of *March*
 in the 2d year of the reign of our lord
William and lady *Mary*, now king and
 queen of *England*, &c. at the parish of
St. George in *Southwark* in the county of
Surrey, was taken and detained in prison
 by the said *W. L.* without any warrant
 or commitment for treason or felony ex-
 pressed in the same: And also whereas
 afterwards, to wit, on the 29th day of
March in the said 2d year of the reign of our
 said

saïd lord the king and lady the queen, at the parish aforesaid in the county of *Surrey* aforesaid, the saïd *J. F.* demanded of the saïd *W. L.* a true copy of the warrant of commitment and detainer of the saïd *J. F.* in the saïd prison by him the saïd *W. L.* Yet the saïd *W. L.* altho' often requested, within the space of six hours next after the saïd demand, did not deliver a copy of the warrant of commitment and detainer of the saïd *J. F.* in the custody of the saïd *W. L.* but he intirely neglected and omitted to deliver the same to him; contrary to the form of the statute in such case lately made and provided; whereby and by force of the saïd statute the saïd *W. L.* has forfeited the sum of 100 *l.* Whereby by force of the saïd statute an action accrued to the saïd *J. F.* being the party aggrieved, to demand and have of the saïd *W. L.* the saïd 100 *l.* Yet the saïd *W.* altho' often requested, &c. has not yet paid the saïd 100 *l.* or any part thereof, to the saïd *J.* but has hitherto intirely refused, and still does refuse to pay him the same, to the damage of the saïd *J.* of 10 *l.* And thereupon he brings suit, &c.

Memorandum
of a declaration
of a pre-
cedent term.

Somersetshire, to wit: *Be it remembered*, that heretofore, to wit, in the term of *Easter* in the 1st year of the reign of our lord the present king, before our lord the king at *W. E. P. Esq;* came by *H. G.* his attorney, and brought here into the court of our saïd lord the king then there his certain

certain bill against *T. S.* bailiff of the borough of *I.* in the county aforesaid, in the custody of the marshal, &c. of a plea of debt; and there are pledges of prosecuting, to wit, *J. D.* and *R. R.* which said bill follows in these words, to wit, *Somersetshire*, to wit, *E. P.* Esq; complains *Declaration in debt on statute 7 & 8 W. 3. c. 25. §. 6.* of *T. S.* bailiff of the borough of *I.* in the county aforesaid, in the custody of the marshal of the *Marshalsea* of our Lord the king, before the king himself, of a plea, *against a returning officer, for refusing a copy of a poll.* that he render to him 500 *l.* which he owes him, and unjustly detains; for that, to wit, that *whereas* the town of *I.* in the county aforesaid is an antient borough, *Custom to choose members.* and that two burgeses of the same borough to come to every parliament of our lord the king and his predecessors, kings and queens of *England*, from the time to the contrary whereof the memory of man is not, have been chosen and used to be chosen by the burgeses and inhabitants of the said borough, having votes in that behalf: *And whereas* a certain writ of our lord the present king, issued out of his Chancery at *W.* in the county of *M.* on the 7th day of *January* in the 1st year of his reign, bearing date the same day and year, directed to the sheriff of the said county of *S.* by which said writ our said lord the king reciting, that whereas our said lord the king, by the advice and assent of his council, for certain arduous and urgent affairs concerning our said lord the king, the state and defence of his

Writ of election.

his kingdom of *Great Britain* and the church, had ordered a certain parliament to be held at his city of *W.* on the 17th day of *March* then next ensuing, and there to have conference and treat with the prelates, great men and peers of his said kingdom, did command and strictly injoin the then sheriff of the county of *S.* that proclamation being made in his next county-court to be holden after the receipt of the said writ, at the time and place aforesaid, two knights girt with swords, of the most fit and discreet of the said county, and of every city of the said county two citizens, and of every borough two burgeses of the most discreet and sufficient, freely and indifferently by them who at such proclamation should be present, the said sheriff should cause to be elected, according to the form of the statute in that case made and provided, and the names of such knights, citizens and burgeses, so elected, in certain indentures thereupon to be made between the said sheriff and them who should be present at such election to be inserted, whether the person so elected should be present or absent, and them at the said day and place should cause to come; so that the said knights full and sufficient power for themselves and the commonalty of the same county, and the said citizens and burgeses for themselves and the commonalty of the said cities and boroughs severally from them might have, to do and

consent

consent to those things which then and there by the common council of his said majesty's kingdom (with God's assistance) should happen to be ordained upon the affairs aforesaid; so that through defect of such power, or by an improvident election of such knights, citizens and burghesses, the said affairs might not in any wise remain unprovided for; Willing nevertheless, that neither the said sheriff, nor any other sheriff of his said majesty's kingdom aforesaid should in any wise be elected; and the said election in full county of the same sheriff so made, distinctly and openly under the seal of the said sheriff, and the seals of them who should be present at such election, at such election the said sheriff should certify to our said lord the king, in his Chancery, at the day and place aforesaid, without delay, remitting to our said lord the king one part of the aforesaid indentures sewed to the said indentures together with the said writ, as by the said writ now remaining in the court of Chancery of our said lord the king at *W.* aforesaid more fully appears: Which said writ afterwards, to wit, on the 26th day of *January* in the said 1st year of the reign of our said lord the present king, at *I.* aforesaid, in the said county of *S.* was delivered to one *J. T.* Esq; then sheriff of the said county of *S.* to be executed in form aforesaid. By Precept to a virtue of which said writ the same sheriff ^{defendant, as} afterwards, to wit, on the said 26th day ^{bailiff of the} _{borough.} of

of *January* in the first year aforesaid, there made his certain precept in writing, sealed with the seal of his said office of sheriff, directed to the bailiff of the said borough of *I.* in the county aforesaid, of and for the electing within that borough two burgesses of the same borough, according to the form and effect of the said writ: *Which* said precept afterwards, to wit, on the said 26th day of *January* in the 1st year aforesaid, at *I.* aforesaid, was delivered to the said *T. S.* then bailiff of the said borough of *I.* (to which said bailiff the execution of the said precept belonged) to be executed in form of law.

The election.

By pretext of which said precept afterwards, to wit, on the 2d day of *February* in the said 1st year of the reign of our lord the present king, at *I.* aforesaid, the election of two burgesses for the same borough of *I.* aforesaid, to come to the said parliament, according to the form and effect of the said writ, came on. And thereupon the said *E. P.* and one Sir *J. B.* Knt. *W. B.* Esq; and *J. H.* Esq; were and stood candidates at the said election, that of them two might be chosen to be burgesses of parliament for the same borough; and many burgesses of the said borough were present at the said election, and having votes in that behalf, then and there gave their votes for the said *E. P.* to be one of the said two burgesses of parliament for the said borough; and divers burgesses of the said borough also present

at the said election, then and there gave their votes for the said Sir *J. B.* to be another of the said two burgessees of parliament for the said borough; and divers other burgessees of the said borough also present at the said election, then and there gave their votes for the said *W. B.* and *J. H.* to be the two burgessees of parliament for the said borough. *So that for* *Poll taken.* the making the said election plain, a poll of the voters at the said election being required and demanded by some of them, was then and there had, and taken in writing before the said *T. S.* then bailiff of the said borough as aforesaid; and he the said *T. S.* then and there took and had the said poll. *And after the poll of voters* *Copy demanded.* of, in and for the said election, taken, had and ended, to wit, on the 10th day of *February* in the 1st year aforesaid, at *I.* aforesaid, the said *E. P.* requested the said *T. S.* then bailiff of the said borough as aforesaid, to deliver to the said *E. P.* a copy of the poll of voters found at the said election, and then and there was ready and offered to pay to the said *T. S.* any reasonable sum of money for writing thereof, which he should demand for the same: *Yet the said T. S. bailiff of the said* *Refused.* borough as aforesaid, (to which said bailiff the execution of the said precept for electing the said burgessees then belonged) no ways regarding the duty of his office of bailiff of the said borough in this behalf, and the statute in such case made and

provided, nor any ways fearing the penalty contained in the said statute, did not then or afterwards deliver to the said *E. P.* a copy of the poll of voters at the said election for the said borough, but voluntarily then and afterwards intirely refused to deliver the same to him, contrary to the said statute made and provided: *Whereby* an action accrued to the said *E. P.* to demand and have of the said *T. S.* the said 500 *l.* *Tet* the said *T. S.* altho' often requested, has not yet paid the said 500 *l.* to the said *E. P.* but has hitherto intirely refused, and still does refuse to pay him the same: Wherefore he says that he is injured, and has damage to the value of 40 *l.* And thereupon he brings suit, &c.

Actio accrevit.

Imparlance.

And now at this day, to wit, *Friday* next after the morrow of the *Holy Trinity*, in the 2d year of the reign of our said lord the present king, in this same term, until which day the said *T.* had leave to imparl to the said bill, and then to answer, &c. before our lord the king at *W.* comes as well the said *E.* by his attorney afore said, as the said *T.* by *J. L.* his attorney. *And* the said *T.* defends the force and injury when, &c. and says that he does not owe to the said *E.* the said 500 *l.* or any part thereof, in manner and form as the said *E.* has above declared against him; And of this he puts himself upon the country: *And* the said *E.* does so likewise, &c. *Therefore* let a jury come there-

Non debet.

Issue.

Venire.

thereupon before our Lord the king at *W.* on *Wednesday* next after three weeks of the *Holy Trinity*; And who neither, &c. To take cognizance, &c. Because as well, &c. The same day is given to the parties aforesaid at the same place, &c. At which day the said parties came by their attornies aforesaid before our Lord the king at *W.* and the sheriff did not return the said writ: *Therefore* let a jury thereupon, as before, come before our lord the king at *W.* on *Wednesday* next after fifteen days of *St. Martin*; And who neither, &c. To take cognizance, &c. Because as well, &c. The same day is given to the parties aforesaid at the same place, &c. At which day the said parties came by their attornies aforesaid before our lord the king at *W.* and the sheriff did not return the said writ. *Therefore* let a jury thereupon, as before, come before our lord the king at *W.* on *Tuesday* next after the octave of the purification of the blessed virgin *Mary*; And who neither, &c. To take cognizance, &c. Because as well, &c. The same day is given to the parties aforesaid at the same place. *Afterwards* the process being continued between the parties aforesaid of the plea aforesaid, by the jury being respited between them, before our lord the king at *W.* until *Wednesday* next after fifteen days of *Easter* thence next ensuing, unless the justices of our lord the king assigned to take the assizes in the county

Vic. non misit breve.
Alias venire.
Vic. non misit breve.
Alias venire.
Process continued.
Nisi Prius.

R 2 afore-

aforesaid shall first come on *Monday* the 18th day of *March* at the castle of *T.* in the county aforesaid, by form of the statute, &c. for default of the jurors, &c. *At which* said *Wednesday* next after fifteen days of *Easter*, before our lord the king at *W.* the said *E.* came by his attorney aforesaid; and the said justices of our lord the king assigned to take the assizes, &c. before whom, &c. sent here their record before them, had in these words: *Afterwards*, on the day and at the place within contained, before *R. P. Esq;* one of the barons of the Exchequer of our lord the king, and *Sir R. E. Knt.* one of the justices of our lord the king assigned to hold pleas before the king himself, justices of our lord the king assigned to take the assizes in the county of *S.* by form of the statute, &c. come as well the within named *E. P. Esq;* as the within-written *T. S.* bailiff of the borough of *I.* within written, in the county aforesaid, by their attornies within contained, and the jurors of the jury, whereof mention is within made, being demanded, some of them, to wit, *R. C.* and *R. C.* come and are sworn upon that jury; and because the residue of the jurors of the same jury do not appear, *therefore* others of those standing about, hereunto chosen by the sheriff of the county aforesaid, at the request of the said *E. P.* and by the command of the said justices, are added anew, whose names are assiled in the within written panel,

Postea.

Tales.

panel, according to the form of the statute in such case made and provided; And the jurors so added anew, to wit, *J. S. W. E. J. S. J. C. L. D. H. P. N. H. R. L. J. D.* and *H. T.* being also demanded, come, who together with the said other jurors first hereunto impanelled and sworn, being chosen, tried and sworn to speak the truth of the within contained, say upon their oath, *that the said T. S. owes to the said E. P. the within mentioned 500 l. and every part thereof, in manner and form as the said E. P. has within declared against him: And they assess the damages of the said E. P. by occasion of the detaining the within written debt, besides his costs and charges by him about his suit in this behalf expended to 2 d. and for those costs and charges to 40 s. Therefore it is considered, that the said E. P. recover against the said T. S. his said debt, and the damages aforesaid assessed by the said jury in form aforesaid; and also 18 l. for the increase of his said costs and charges, adjudged by the court of our said lord the king now here, to the said E. P. by his assent: Which said damages amount in the whole to 20 l. and 2 d. And the said T. S. in mercy, &c.*

Middlesex, to wit, *W. N.* complains of *T. B.* in the custody of the marshal, &c. of a plea, that he render to him 16 l. of lawful money of Great Britain, which he owes him and unjustly detains, for that, to wit, that whereas the said *T. B.* on the 26th

Verdict for the plaintiff.

Judgment.

Declaration in debt on the statute 9 Ann. for preventing excessive and deceitful gaming.

day of *May* in the 11th year of the reign of our sovereign lady *Anne* now queen of *Great Britain*, &c. at *W.* in the county aforesaid, was indebted to the said *W. N.* in the said 16 *l.* for so much money after the 1st day of *May* in the year of our Lord 1711. had and received by the said *T. B.* to the use of the said *W. N.* whereby an action accrued to the said *W. N.* to demand and have of the said *T. B.* the said 16 *l.* according to the form of the statute made and provided in the parliament of our said sovereign lady the present queen, held at *W.* in the county of *M.* on the 25th day of *November* in the year of our Lord 1710. intituled, *An Act for the better preventing of excessive and deceitful Gaming.* Yet the said *T.* although often requested has not yet rendered the said 16 *l.* to the said *W. N.* but has hitherto refused, and still does refuse to render the same to him. Wherefore he says he is injured, and has damage to the value of 20 *l.* And thereupon he brings suit, &c.

Nil debet was pleaded, and the plaintiff recovered a verdict, and thereupon the money was paid.

Declaration in debt Qui tam, &c. against a parson for marrying without publishing the banns. Stat. 10 Ann. c. 19. Stat. 7 & 8 W. 3. c. 35.

London, to wit, *H. G.* late of *L.* Clerk, was summoned to answer as well our lord the present king as *J. B.* who sues in this behalf as well for our said lord the present king as for himself, of a plea, that he render as well to our said lord the present king as to the said *J.* who as well, &c. 400 *l.* of lawful money which he owes them and unjustly

unjustly detains, &c. And whereupon the *First count.*
 said J. who sues in this behalf as well for
 our said lord the present king as for him-
 self by R. D. his attorney says, *That* with-
 in one year next before the day of suing
 out the said original writ, to wit, on the
 third day of *January* in the 3d year of
 the reign of our lord the present king at
 L. aforesaid, to wit, in the parish of St.
Brides in the ward of *Farringdon Without*,
 the said H. being a person in holy orders,
 did marry a certain man by the name of
 R. H. to a certain woman by the name of
 E. P. without any publication of the banns
 of marriage between the said R. and E.
 according to law, and without any licence
 first had and obtained for the said mar-
 riage from any proper ordinary whatsoever,
 contrary to the form of the statute in such
 case made and provided. *Whereby an action* *An action ac-*
 accrued to our said lord the present king, *crued.*
 and to the said J. B. who as well, &c. to
 demand and have of the said H. 100 l. par-
 cel of the said 400 l. *And the said J. who* *Second count.*
 as well, &c. further says, that within one
 year next before the day of suing out the
 said original writ, to wit, on the 12th day
 of the said *Jan.* in the 3d year aforesaid,
 at L. aforesaid in the parish and ward aforesaid,
 the said H. being a person in holy or-
 ders did marry a certain other man by the
 name of W. H. to a certain other woman
 by the name of M. S. without any publi-
 cation of the banns of marriage between

Third count.

the said *W. H.* and *M. S.* and without any licence first had and obtained for the said last mentioned marriage from any proper ordinary whatsoever, contrary to the form of the statute in such case lately made and provided. *Whereby* an action accrued to our said lord the present king and to the said *J. B.* who, as well, &c. to demand and have of the said *H.* other 100 *l.* other parcel of the said 400 *l.* And the said *J. B.* who as well, &c. further says, that within one year next before the suing out the said original writ, to wit, on the 10th day of *February* in the 3d year aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, the said *H.* being a person in holy orders, did marry a certain other man by the name of *J. W.* to a certain other woman by the name of *K. F.* without any publication of the banns of marriage between the said *J. W.* and *K. F.* according to law, and without any licence first had and obtained for the said last mentioned marriage from any proper ordinary whatsoever, contrary to the form of the said statute in such case lately made and provided. *Whereby* an action accrued to our said lord the present king, and to the said *J.* who as well, &c. to demand and have of the said *H.* other 100 *l.* other parcel of the said 400 *l.* And the said *J. B.* who as well, &c. further says, that within one year next before the suing out the said original writ, to wit, on the 21st day

Fourth count.

day of *February* in the 3d year aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, the said *H.* being a person in holy orders, did marry a certain other man by the name of *A. L.* to a certain other woman by the name of *E. S.* without any publication of the banns of marriage between the said *A. L.* and *E. S.* according to law, and without any licence first had and obtained for the said last mentioned marriage from any proper ordinary whatsoever, contrary to the form of the said statute in such case lately made and provided. *Whereby* an action accrued to our said lord the present king, and to the said *J. B.* who as well, &c. to demand and have of the said *H.* other 100 *l.* residue of the said 400 *l.* Yet the said *H.* altho' often requested, &c. has not yet rendered the said 400 *l.* or any part thereof, to our said lord the present king, and to the said *J. B.* who as well, &c. or to either of them; but he has hitherto intirely refused, and still does refuse to render the same to our said lord the present king, or to the said *J. B.* who as well, &c. to the damage of the said *J. B.* who as well, &c. of 10 *l.* And therefore as well for our said lord the present king as for himself he brings suit in form aforesaid, &c.

And the said *H.* by *J. B.* his attorney *Plea*, Non comes and defends the force and injury debet. when, &c. and says, that he the said *H.* does not owe to our said lord the king, and

*Issus.*Venire a-
warded.*Jury respited*
Nisi Prius.

Postea.

and to the said *J. B.* who as well, &c. the said 400 *l.* or any part thereof, in manner and form as the said *J.* who as well, &c. has above declared against him; And of this he puts himself upon the country: And the said *J.* who as well, &c. does so likewise. Therefore it is commanded to the sheriff, that he cause to come here on the morrow of the ascension of our Lord twelve, &c. By whom, &c. And who neither, &c. To take cognizance, &c. Because as well, &c. At which day the jury between the said parties was respited thereupon between them here until this day, to wit, on the morrow of the Holy Trinity then next ensuing; unless Sir P. K. Knt. chief justice of the court of our lord the king of the bench here assigned by form of the statute, &c. should come before on Wednesday the 5th day of July last past at Guildhall, London. And now here at this day the said *J.* who as well, &c. comes here by his attorney aforesaid; and the said chief justice, before whom, &c. sent here his record in these words: Afterwards, on the day and at the place within contained, before Sir P. K. Knt. the chief justice within written, *J. H. Gent.* being associated to him by form of the statute, &c. came as well the within named *J. B.* who sues in this behalf as well for our lord the present king as for himself, in this behalf, as the within written *H. G.* by their attornies within contained; and the jurors of the jury, whereof

whereof mention is within made, being demanded, some of them, to wit, *J. E. D. W. and S. S.* come and are sworn upon that jury. And because the residue of Tales. the jurors of that jury do not appear, therefore others of those standing around, chosen by the sheriffs of *London*, are added a-new, at the request of the said *J. B.* who as well, *Ec.* and by the command of the said chief justice, whose names are affixed in the under-written panel, according to the form of the statute in such case made and provided: Which said jurors so added anew, to wit, *R. B. J. S. Ec.* being also demanded, come, who together with the said other jurors first impanelled and sworn, being chosen, tried, and sworn to speak the truth of the within contained, say upon their oath, That as to the first, *Verdict.* second and fourth count within written, *Part for the plaintiff, and part for the defendant.* the said *H. G.* owes to our said lord the king, and the said *J.* who as well, *Ec.* 300 *l.* parcel of the within-written 400 *l.* in manner and form as the said *J.* who as well, *Ec.* has within declared against him; And they assess the damages of the said *J.* by occasion of the detaining the said debt of 300 *l.* parcel of the within-written debt of 400 *l.* besides his costs and charges by him about his suit in this behalf expended, to 2 *d.* and for those costs and charges, to 53 *s.* and 4 *d.* And the said jurors upon their oath further say, that as to the third count within written, the said *H. G.* does not owe to our said lord the

Judgment.

the king and the said *J. B.* who as well, &c. the within-written 100 *l.* residue of the said 400 *l.* in manner and form as the said *J. B.* who as well, &c. has within declared against him. *Therefore* it is considered, that our said lord the present king, and the said *J. B.* who as well, &c. recover against the said *H. G.* the said debt of 300 *l.* which it is above found by the jury the said *H. G.* has forfeited and owes to our said lord the present king, and to the said *J. B.* by force of the said statute; whereof our said lord the present king has 150 *l.* for his moiety, and the said *J. B.* who as well, &c. has the other 150 *l.* for his moiety, according to the form of the said statute. Also it is considered, that the said *J. B.* who as well, &c. recover against the said *H. G.* his said damages, to 53 *s.* and 6 *d.* assessed by the said jury in form aforesaid; and also 17 *l.* 6 *s.* and 8 *d.* adjudged by the court here to the said *J. B.* who as well, &c. at his request, for the increase of his said costs and charges; which said damages in the whole amount to 20 *l.* And the said *H. G.* in mercy, &c. And the said *J. B.* who as well, &c. also in mercy, for his false clamour against the said *H. G.* for the residue of the said debt whereof the said *H. G.* is above acquitted by the said jury; And that the said *H. G.* go thereof without day, &c.

Alias prout
patet.

Elsewhere, as it appears of the term of *St. Michael* in the 16th year of the reign
of

of king *Geo II.* in the 631 *Roll.* it is thus contained: *Kent*, to wit, *E. B.* late of *H.* *Declaration in*
in the said county, *Gent.* and *P. B.* late *debt on the*
of the same place, *Gent.* have been sum- *statute 9 Ann.*
moned to answer to *J.* Earl of *W.* who *c. 25. for ta-*
sues as well for himself as for the poor of *king partridges*
the parish of *N.* in the said county, in a *in the night.*
plea, that they render to them 40 *l.* which *C. B.*
they owe to them, and unjustly detain,
&c. And whereupon the said *J.* Earl of
W. who sues as well for himself as the
poor of the said parish in this respect, by
F. M. his attorney, says, that the said *E.*
and *P.* after the 1st day of *May* in the
year of our Lord 1711. to wit, on the
16th day of *August* in the year of our
Lord 1742. in the night-time of that day,
at the parish aforesaid, did take certain
partridges, to wit, eight partridges, con-
trary to the statute in such case lately
made and provided; by reason whereof,
by force of the statute in such case lately
made and provided, an action has accrued
to the said *J.* Earl of *W.* who sues as
well, &c. to demand and have of the said
E. and *P.* the said 40 *l.* to wit, 5 *l.* for
each of the said eight partridges so taken
by them as aforesaid, for himself and the
poor of the said parish: *Nevertheless* the
said *E.* and *P.* although often requested,
have not rendered to the said *J.* earl of
W. and the poor of the said parish, the
said 40 *l.* or any part thereof, but have
wholly refused, and still refuse to render
the same to them; Whereby the said *J.*
earl

earl of *W.* who as well, &c. says that he is injured, and hath damage to the value of 10 *l.* And thereupon, as well for himself as the poor of the said parish, he brings suit, &c.

Impar lance.

And the said *E.* and *P.* by *S. E.* their attorney come and pray leave to imparl until the octave of *St. Hilary*; And they have it, &c. The same day is given to the said *J.* earl of *W.* here, &c. And now here at this day, to wit, on the octave of *St. Hilary* in the same term of *St. Hilary*, comes as well the said earl, who as well, &c. as the said *E.* and *P.*

Plea, Nil debent.

by their attorney aforesaid. And the said *E.* and *P.* defend the force and injury when, &c. and say that they do not owe the said 40 *l.* as in and by the said declaration is above supposed; And hereupon they put themselves upon the country:

Issue.

And the said earl does so likewise. Therefore the sheriff is commanded, &c.

Declaration in case on the statute, for keeping a grey-bound and killing a bare, not being a person qualified. C. B. Bluet v. Needs. Comy. 522.

Kent, to wit, *E. L.* late of, &c. was summoned to answer to the poor of the parish of *E.* in the county aforesaid, and to Sir *J. S. Bart.* who sues in this particular as well for himself as for the said poor of the said parish of *E.* aforesaid, of a plea, that he render to the said poor and the said *J. S.* who sues as aforesaid, 10 *l.* of lawful money of *Great Britain*, which he owes to and unjustly detains from, &c. And whereupon the said Sir *J.* who sues as aforesaid by *H. C.* his attorney saith, That the said *E.* on the 30th day

day of *March* 1736. at and in the parish of *E.* aforesaid, did keep a certain greyhound for the destruction of the game of this kingdom, he the said *E.* then not being a person qualified by the laws of this realm to keep a greyhound for the destruction of the game, against the form of the statute in such case made and provided: *Whereby* and by force of the statute in such case lately made and provided, an action hath accrued to the poor of the parish aforesaid, and to the said Sir *J.* who sues as aforesaid, to demand and have of the said *E.* for his said offence 5 *l.* parcel of the said 10 *l.* And the said *Second count.* Sir *J.* who sues as aforesaid, further saith, *That* the said *E.* on the said 30th day of *March* in the year aforesaid, in the said parish of *E.* in the county aforesaid, did with a certain greyhound kill one hare, he the said *E.* then not being a person qualified to kill game, against the form of the statute in such case lately made and provided: *Whereby*, and by force of the statutes in such case lately made and provided, an action hath accrued to the poor of the parish aforesaid, and to the said Sir *J.* who sues as aforesaid, to demand and have of the said *E.* for his said last mentioned offence, 5 *l.* residue of the said 10 *l.* Yet the said *E.* (altho' often requested) hath not yet paid the said 10 *l.* or any part thereof, to the said poor and the said Sir *J.* who sues as aforesaid, or to either of them; but he to pay the same

same to the said poor and the said Sir J. who sues as aforesaid, hitherto wholly hath, and still doth refuse, to the said Sir J. who sues as aforesaid, his damage of 10 l. And therefore as well for the said poor as for himself he brings his suit, &c.

*Plea, Nil
debet.*

And the said E. L. by R. P. his attorney comes and defends the wrong and injury when, &c. and says that he does not owe to the said Sir J. who sues as well, &c. the said sum of 10 l. or any part thereof, in manner and form as the said Sir J. who sues as well, &c. above thereof complains against him; And of this he puts himself upon the country: And the said Sir J. who sues as aforesaid, does likewise the same. *Therefore, &c.*

Issue.

*Judgment for
not entering
the issue.*

And the said Sir J. S. altho' solemnly called, came not, nor hath entered his said issue, nor hath further prosecuted his said writ: *Therefore* he and his pledges of prosecution are thereupon amerced, &c. And the names of the pledges of the said Sir J. are, &c. And that the said E. depart without day, &c. It is also considered, that the said E. do recover against the aforesaid Sir J. his damages by reason of the premisses, to 3 l. 16 s. 8 d. to the said E. by the discretion of the justices here adjudged at his request for his costs and charges in this behalf sustained, according to the form of the statute in such case made and provided.

Middlesex, to wit, *J. L.* late of, &c. was summoned to answer *W. R.* who sues as well for our lord the king as for himself in this behalf, in a plea, that he render to our said lord the king and the aforesaid *W.* the sum of 101 *l.* 11 *s.* of lawful money of *Great Britain*, which to them he oweth and unjustly detaineth, &c. And whereupon the said *W.* who sues as well for our said lord the king as for himself, by *J. B.* his attorney complaineth, that the said *J. L.* after the 29th day of *September* in the year of our Lord 1714. to wit, on the 22d day of *June* in the year of our Lord 1736. at the parish of *St. Martin in the Fields* in the county aforesaid, upon a certain contract made after the said 29th day of *September*, to wit, on the 22d day of *June* in the year of our Lord 1733. at the parish aforesaid in the county aforesaid, between the said *J.* and one *M. M.* took, accepted and received of and from the said *M.* the sum of 4 *l.* 14 *s.* 6 *d.* by way of corrupt bargain for giving day of payment to her the said *M.* from the said 22d day of *June* in the year of our Lord 1733. to the 22d day of *June* in the year of our Lord 1736. of the sum of 10 *l.* 10 *s.* lent on the 22d day of *June* in the year of our Lord 1733. at the parish aforesaid in the county aforesaid, by the said *J.* to the said *M.* Which said sum of 4 *l.* 14 *s.* and 6 *d.* so took, accepted and received by the said *J.* of the said *M.* as aforesaid, is above the rate of 5 *l.* for the forbearing.

of 100 *l.* for one year, and is against the form of the statute in such case made and provided: *Whereby* an action hath accrued to the said *W.* who sues as well for our lord the king as himself, to demand and have of and from the said *J.* the sum of 31 *l.* 10 *s.* part of the said 101 *l.* 11 *s.* being the treble value of the said sum of 10 *l.* 10 *s.* of the said *J.* by him lent to the said *M.* as aforesaid.

*Declaration in
debt on a judg-
ment after
verdict.*

Middlesex, to wit, *W. C.* complains of *C. S.* in the custody of the marshal, &c. of a plea, that he render to him 23 *l.* and 2 *d.* of lawful money of *England*, which he owes him and unjustly detains; for that, to wit, that *whereas* the said *W. C.* heretofore, to wit, in the term of *Raster* in the 4th year of the reign of our sovereign lady *Anne* now queen of *England*, &c. in the court of our said lady the queen, before the queen herself, the said court then being at *W.* in the said county of *M.* by the judgment of the said court recovered against the said *C.* by the name of *C. S.* 23 *l.* and 2 *d.* which in the said court of our said lady the queen, before the queen herself at *W.* aforesaid in the said county of *M.* were adjudged to the said *W.* for his damages which he sustained, as well by occasion of a certain trespass then lately done by the said *C.* to the said *W.* as for his costs and charges by the said *W.* about his suit in that behalf expended, whereof the said *J.* is convicted, as by the record thereof remaining

maining in the said court of our said lady the queen, before the queen herself at *W.* aforesaid in the said county of *M.* more fully appears: Which said judgment still remains in its full force and effect, no ways satisfied or reversed; and the said *W.* has not yet sued out his execution of the said judgment recovered in form aforesaid; *Whereby* an action has accrued to the said *W.* to have and demand of the said *C.* the said 23 *l.* and 2 *d.* Yet the said *C.* although often requested, &c. has not yet paid the said 23 *l.* and 2 *d.* to the said *W.* but has hitherto intirely refused, and still does refuse, to pay him the same: Wherefore the said *W.* says that he is injured, and hath damage to the value of 30 *l.* And thereupon he brings suit, &c.

Middlesex, to wit, *J. L. Gent.* complains of *R. C. Esq;* in the custody of the marshal of the *Marshalsea*, &c. of a plea, that he render to him 96 *l.* 4 *s.* and 3 *d.* which he owes him, and unjustly detains; *for that*, to wit, that *whereas* the said *J.* in the court of our sovereign lord *W. III.* now king of *England, Scotland, France* and *Ireland*, called the king's court in the kingdom of *Ireland*, before Sir *R. P. Knt.* and his companions, then justices of our said lord the present king of the bench of his kingdom of *Ireland*, in the term of *St. Hilary* in the 6th year of the reign of our said lord the present king, by the consideration of the same court recovered against the said *R. C.* 33 *l.* 8 *s.* and 3 *d.*

Declaration in debt for damages and costs on a judgment in ejectment in C. B. in Ireland, for the costs in error in B. R. costs in error in B. R. here. Costs on the judgment. Salk. 469. 3 Salk. 144. Holt 78.

which were adjudged by the said court of our said lord the king of his bench in the said kingdom of *Ireland* to the said *J.* by his assent for his damages, which he had as well by occasion of a certain trespass and ejectment of farm done by the said *R.* to the said *J.* as for his costs and charges by him about his suit in that behalf expended whereof the said *R.* is convicted; as by the record and process remaining in the court of our said lord the present king, before the king himself here, *to wit*, at *W.* in the county of *M.* which our said lord the present king, for certain causes, caused to be transmitted into the same court of our said lord the present king, before the king himself, more fully appears: Which said judgment remains in the said court of our said lord the king, before the king himself here, *to wit*, at *W.* aforesaid in the county of *M.* aforesaid, in its full force and effect, no ways satisfied or discharged; And whereupon the said *J.* has not yet sued out his execution for the said damages. *Whereupon* an action accrued to the said *J.* to demand and have of the said *R.* the said 33 *l.* 8 *s.* and 3 *d.* parcel of the said 96 *l.* 4 *s.* and 3 *d.* And also *whereas* the said *J.* lately in the said court of our said lord the present king, before the said king himself, called the king's court in his kingdom of *Ireland*, by the consideration of the same court recovered against the said *R.* *C.* 18 *l.* 16 *s.* sterling, which were adjudged to the said *J.* for his

Actio accrevit.

Costs on affirmation in B. R. in Ireland.

his costs and damages which he had sustained by occasion of the delay of execution of the said judgment, by pretence of prosecuting a certain writ of our said lord the king for correcting errors in the said judgment, and that the said *J.* should have his execution thereof, &c. as by the record and process of the same judgment last mentioned, remaining in the court of our said lord the present king, before the king himself here, to wit, at *W.* in the said county of *M.* which our said lord the king, for certain causes, caused to be transmitted into the said court of our said lord the king, before the king himself here, to wit, at *W.* in the said county of *M.* more fully appears: Which said last mentioned judgment also remains in the said court of our said lord the present king, before the king himself at *W.* aforesaid, in the said county of *M.* in its full force and effect, no ways satisfied or discharged; And the said *J.* has not yet sued out his execution for the said 18 *l.* 16 *s.* for the aforesaid damages and costs last mentioned: *Whereupon* an action also accrued *Actio accrevit* to the said *J.* to demand and have of the said *R.* the said 18 *l.* 16 *s.* other parcel of the said 96 *l.* 4 *s.* and 3 *d.* *And also* *Costs on affirmatione here.* *whereas* the said *J.* lately in the court of our said lord the present king, before the king himself, to wit, in the term of *St. Hilary* in the 9th year of the reign of our said lord the present king, the said court then and still being at *W.* in the said

S 3

county

county of *M.* by the consideration of the same court recovered against the said *R. C.* 44 *l.* which according to the form of the statute in such case made and provided were adjudged by the court of our said lord the present king, before the king himself then and there, to wit, at *W.* in the said county of *M.* to the said *J. L.* for his costs and damages which he sustained by occasion of the delay of execution of the said judgment, by the pretence of prosecuting a certain other writ of our said lord the king for correcting errors, and that the said *J. L.* should have his execution thereof, as by the record and process remaining in the said court of our said lord the present king, before the king himself here, to wit, at *W.* in the county of *M.* aforesaid, more fully appears: Which said last mentioned judgment remains in the said court of our said lord the present king, before the king himself at *W.* in the county of *M.* in its full force and effect, no ways satisfied or discharged: And the said *J.* has not yet sued out his execution for the said 44 *l.* for his said costs and damages last men-

Actio accrevit.

tioned. *Whereupon* an action has accrued to the said *J.* to demand and have of the said *R.* the said 44 *l.* residue of the said 96 *l.* 4 *s.* and 3 *d.* *Yet* the said *R.* altho' often requested, &c. has not yet paid the said several sums of 33 *l.* 8 *s.* and 3 *d.* 18 *l.* 16 *s.* and 44 *l.* amounting in the whole to 96 *l.* 4 *s.* and 3 *d.* to the said *J.*
but

but has hitherto refused, and still does refuse to pay him the same, to the damage of the said J. of 20 l. And thereupon he brings suit, &c.

And the said R. L. by — his attorney *Plea.*
comes and defends the force and injury *As to the costs*
when, &c. And as to the said 33 l. 8 s. *on the judgment, Nul*
and 3 d. in the said declaration first mentioned, parcel of the said 96 l. 4 s. and
3 d. the said R. says that the said J. ought not to have or maintain his said
action thereupon against him, because he says that there is not any such record of
the recovery of the said 33 l. 8 s. and 3 d. against the said R. as by his said declaration is above supposed: And this he is
ready to verify. And as to the said 18 l. *As to the costs*
16 s. in the said declaration secondly mentioned, other parcel of the said 96 l. 4 s. *on the first affirmation, Nul*
and 3 d. the said R. says that the said J. ought not to have or maintain his said
action thereupon against him, because he says that there is not any such record of
the recovery of the said 18 l. 16 s. against the said R. as by the said declaration is
further also supposed: And this he is also
ready to verify. And as to the said 44 l. *As to the costs*
in the said declaration mentioned, residue *on the last affirmation, demurrer in bar.*
of the said 96 l. 4 s. and 3 d. the said R. says that the said J. ought not to have
or maintain his said action thereupon against him, because he says that the said
declaration, as to the said 44 l. and the matter therein contained, are not sufficient
in law for him the said J. to have

Causes of demurrer, those costs not recoverable here,

or maintain his said action thereupon against him for the same; to which said declaration, as to the said 44 l. the said R. has no need, and is not bound by the law of the land in any manner to answer; And this he is ready to verify: Wherefore for default of a sufficient declaration in this behalf the said R. prays judgment, and that the said J. may be barred from having his said action thereupon against him for the same, &c. And for causes of demurring in law in this behalf to the said declaration, as to the said 44 l. the said R. according to the form of the statute in such case lately made and provided, shews and demonstrates to the court here these causes following, to wit, that the said 44 l. adjudged by the court of our said lord the king, before the king himself at W. to the said J. for his costs, charges and damages, by occasion of the delay of execution of the said judgment, by pretence of prosecuting the said writ of error, by the law of the land of this kingdom of *England* are not recoverable in the said court of our said lord the king, before the said king at W. And that the said declaration, as to the said 44 l. is insensible, incertain, and wants form; And this the said R. is ready to verify: Wherefore he prays judgment of the said declaration; and that the said declaration, as to the said 44 l. may be quashed, &c.

Replication.

And the said J. says, that he by any thing by the said R. above alledged in pleading,

pleading, ought not to be barred from having his said action thereupon against the said R. because *as to* the said plea above pleaded in bar by the said R. as to the said 33 l. 18 s. and 3 d. in the said declaration above first mentioned, parcel of the said 96 l. 4 s. and 3 d. the said J. says that there is such record of the recovery of the said 33 l. 8 s. and 3 d. against the said R. remaining in the said court of our said lord the present king here, before the king himself, to wit, at W. in the county of M. aforesaid, as the said J. has above declared thereupon; And this he is ready to verify by the said record, as the court of our said lord the present king here shall consider, &c. *And thereupon the said J. Day to bring in the record.* is bid to have the said record before our said lord the king at W. on ——— next after ——— at his peril: The same day is given to the said R. at the same place, &c. *And as to* the said plea above pleaded in bar by the said R. as to the said 18 l. 16 s. in the said declaration secondly mentioned, other parcel of the said 96 l. 4 s. and 3 d. the said J. also says, that there is such record of the recovery of the said 18 l. 16 s. against the said R. remaining in the said court of our said lord the king, before the king himself here, to wit, at W. in the said county of M. as the said J. has above thereupon declared; And this he is also ready to verify by the said record, as the court of our said lord the present king here shall consider, &c.

And

*Day to bring in
the record.*

*Joinder in de-
murrer.*

And upon this the said *J.* is bid also to have the said record before our lord the king at *W.* on — next after — at his peril: The same day is given to the said *R.* at the same place, &c. *And as to the* said matter above alledged by the said *R.* to quash the said declaration of the said *J.* as to the said 44 *l.* in the said declaration last mentioned, residue of the said 96 *l.* 4 *s.* and 3 *d.* the said *J.* says, that by any thing before alledged the said declaration of the said *J.* as to the said 44 *l.* ought not to be quashed, because he says that the said declaration as to the said 44 *l.* and the matter therein contained, are good and sufficient in law for him the said *J.* to have and maintain his said action thereupon against the said *R.* for the same: Which said declaration as to the said 44 *l.* and the matter therein contained, the said *J.* is ready to verify and prove, as the court, &c. *And* because the said *R.* does not answer to the said declaration as to the said 44 *l.* and has not as yet any ways denied the same, the said *J.* prays judgment, and his said debt as to the said 44 *l.* together with his damages by occasion of the detaining that debt to be adjudged to him, &c. *But* because the court of our said lord the present king here is not yet advised of giving their judgment of and upon the premisses, day is therefore given to the parties aforesaid, before our lord the king at *W.* until — next after —, to hear their judgment of and upon the said

Continuance.

said premisses, for that the court of our said lord the present king here is not yet, &c.

London, to wit, R. D. late of L. car. *Declaration in debt on a judgment. C.B.*
 penter, was summoned to answer L. P. of a plea, that he render to him 62 l. of lawful money of Great Britain, which he owes to and unjustly detains from him, &c. And whereupon the said L. by J. C. his attorney saith, that whereas the said L. heretofore, that is to say, in Easter term in the 4th year of the reign of his present majesty king George II. in his said majesty's court, before Sir R. B. Knt. and his brethren, then his majesty's justices of the common bench here at W. in the county of M. by the consideration of the said court recovered against the said R. 62 l. which were adjudged to the said L. in the said court for his damages which he had sustained, as well by occasion of the not performing certain promises and undertakings to the said L. by the said R. then lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the said R. is convicted; as by the record and proceedings thereof, now remaining in his majesty's said court here, may more fully and at large appear: Which said judgment still remains in its full strength, force and effect, not reversed, vacated, annulled, discharged: or satisfied. And the said L. hath as yet obtained no satisfaction of the aforesaid judgment: Whereby an action hath

hath accrued to the said *L.* to demand and have of the said *R.* the said 62 *l.* Yet the said *R.* (altho' often requested) hath not yet rendered the said 62 *l.* or any part thereof, to the said *L.* but to render the same to him hitherto hath and still doth wholly deny, to the damage of the said *L.* of 20 *l.* And thereupon he brings suit, &c.

*Plea, Null
tici record.*

And the said *R.* by *W. W.* his attorney cometh and defendeth the force and injury when, &c. and saith that the said *L.* ought not to have his said action against him, because he saith that there is not any such record of recovery of damages aforesaid against him the said *R.* in his said majesty's court before Sir *R. E. Knt.* and his brethren, his majesty's justices of the Common bench, as the said *L.* in his declaration hath alledged; And this he is ready to verify: Therefore he prays judgment, if the said *L.* ought to have his said action thereof against him, &c.

*Replication,
habetur tale
recordum.*

And the said *L.* saith, that by any thing before alledged he ought not to be barred from having his aforesaid action maintained against the said *R.* because he saith that there is such a record of recovery against him the said *R.* in his said majesty's court of Common bench here remaining, as by the said declaration is above alledged; And this he is ready to verify by the said record: And he prays that the said record may be inspected and seen by the justices here, &c.

And

And because the said *L.* has not the said *Day* given to record now ready here in court, it is said *bring in the record.* by the said court here to the said *L.* that he have the record here on ———; The same day is given to the said *R.* here, &c.

Note; Upon bringing the record into court on the day given, the secondary draws up a rule of court for judgment *Nisi causa* within four days, and at the expiration of that time the secondary certifies at the foot of the rule that no cause hath been shewn; after which judgment may be signed.

Surrey, to wit, *J. M.* late, &c. was summoned to answer *H. G.* of a plea, that he render to him 99 *s.* and 8 *d.* which he owes to and unjustly detains from him, &c. *Declaration is debt on a judgment in the palace-court, C.B.* *And* thereupon the said *H.* by *T. C.* his attorney saith, *That whereas* the said *H.* (that is to say) at the court of the king's palace at *W.* held before the judges of the said court there (to wit) at *S.* in the county of *S.* aforesaid, within the jurisdiction of the said court, on *Friday* the 23d day of *January* in the 9th year of the reign of the present king, by consideration of the said court recovered against the said *J. M.* (by the name of *J. M.*) 99 *s.* and 8 *d.* which were assessed to the said *H.* in the aforesaid court of the king's palace at *W.* held before the judges of the said court there, for his damages which he had sustained, occasioned by the non-performance of several promises and undertakings of the said *J. M.* made to the

the said *H.* by him the said *J.* besides his costs and charges about his said suit in that behalf expended, by the said court there for increase adjudged, whereof the said *J.* is convicted; as by the record and proceedings in the same court of the king's palace at *W.* held before the judges of the said court there, to wit, at *S.* aforesaid, in the county of *S.* aforesaid, within the jurisdiction of the said court there remaining, may appear: Which said judgment still remains in the said court there in full force, not in the least satisfied, reversed or discharged. And the said *H. G.* hath not as yet sued out any execution upon that judgment: By which an action hath accrued to the said *H.* to require and have of the aforesaid *J. M.* the aforesaid 99 s. and 8 d. Nevertheless, &c.

Plea, *Nul tiel Record.*

Replication, *Habetur tale recordum.*

Certiorari to
the palace-
court prayed
and awarded.

And hereupon the said *H.* prays the king's writ to be directed to the judges of the court of the king's palace at *Westminster*, and to every of them, to certify to the justices of the said lord the king here, Whether there be such record of such recovery of 99 s. 8 d. against the said *J.* by the said *H. G.* or not. And it is granted to him returnable here. — At which day here come as well the said *H.* as the said *J.* by their attornies aforesaid, and the said judges of the said court, namely, *William* duke of *Devonshire*, steward of the king's household, Sir *P. M.* Knight

Return.

Marshal of the said household, and Sir T. A. Knight, steward of the palace court aforesaid, sent to the justices here the record aforesaid, whereof there is mention above made between the parties aforesaid, and remaining before them, which said writ and record remain filed amongst the records here without day, &c. *Whereupon* the said H. prays judgment and his debt aforesaid, together with his damages, by reason of detaining of the said debt to be adjudged to him, &c.

Middlesex, to wit, A. B. late, &c. was summoned to answer D. E. in a plea, that he render to him 3 l. 3 s. which he owes to and unjustly detains from him, &c.

Declaration in debt on a judgment of Non prof. C. B.

And whereupon the said D. E. by W. R. his attorney, saith, *That whereas* he the said D. E. heretofore, to wit, in the term of the holy Trinity in the 10th and 11th years of the reign of his present majesty king George the Second, in his said majesty court of Common Bench at Westminster before Sir John Willes, Knight, and his brethren, then his said majesty's justices of the said court here, to wit, at Westminster in the county aforesaid, by judgment of the same court recovered against the said A. B. 33 l. 4 s. which were adjudged to the said D. E. in the same court according to the form of the statute in such case made and provided for his costs and charges which he had sustained, for that the said A. B. did not prosecute his said majesty's writ in a certain plea of *[as the case*

Debt on a mutatus.

case is] lately brought by the said *A. B.* against the said *D. E.* in the said court, whereof the said *A. B.* is convicted as by the record and proceedings thereof now remaining in his said majesty's court of *C. B.* at *Westminster* aforesaid doth plainly appear; which said judgment still remains in force and power, not reversed, annulled or satisfied. And the said *D. E.* hath not yet obtained execution of the said judgment. *Whereby* an action hath accrued to the said *D. E.* to demand and have of the said *A. B.* the said 33 s. 4 d. parcel of the said 3 l. 3 s. And also whereas the said *A. B.* on the 22d day of *July* in the year of our Lord 1737. at *W.* aforesaid, had borrowed of the said *D. E.* 29 s. 8 d. remainder of the said 3 l. 3 s. to be paid to the said *D. E.* when he the said *A. B.* should be afterwards thereunto requested. Yet the said *A. B.* altho' often requested, hath not rendered to the said *D. E.* the said 3 l. 3 s. or any part thereof, but has hitherto refused and still doth refuse to render the same to the said *D. E.* whereby he saith, that he is injured and damnified to the value of 5 l. And thereupon bringeth suit, &c.

Declaration in debt by an executor, on a judgment obtained by the testator. C. B.

Middlesex, A. B. late of, &c. was summoned to answer *C. D.* executor of the testament and last will of *E. F.* deceased, of a plea that he render to him 100 l. of good and lawful money of *Great Britain*, which he unjustly detains from, &c. And thereupon the said *C.* by *W. R.* his attorney saith,

saith, *That whereas* the said *E.* in his life-time, to wit, in the term of *St. Michael* in the 6th year of the reign of the lord the now king, here at *W.* in the said county, before Sir *R. E. Knt.* and his brethren, then justices of our said lord the king of the bench, the said *E.* by the judgment of the said court did recover against the said *A.* a certain debt of 97 *l.* and 60 *s.* for his damages which he sustained on account of the detaining of the said debt whereof he is convicted, as by the record thereof in the said court now remaining plainly appears. *And* the said *C.* avers, that the said 100 *l.* hath not been paid to the said *E.* in his life-time, or to the said *C.* since his death, or to either of them; and that no execution of the debt and damages aforesaid, or any part thereof, hath yet been had or obtained: *By reason* whereof an action accrued to the said *E.* in his life-time, and to the said *C.* since his death, to demand and have of the said *A.* the said 100 *l.* *Yet* the said *A.* altho' often requested, hath not paid the said 100 *l.* to the said *E.* in his life-time, or to the said *C.* since the death of the said *E.* or to either of them; but to pay the same to them hath hitherto refused, and to pay the same to the said *C.* still doth refuse: Whereupon he is prejudiced, and hath damage to the value of 20 *l.* *And* thereupon he bringeth suit, &c. *With this*, that the said *C.* will verify that the judgment aforesaid, which still remains in

Profert of the
letters testa-
mentary.

its full strength and power, in no ways reversed, annulled or satisfied. And the said C. bringeth here into court the letters testamentary of the said E. whereby it plainly appears to the court here, that the said C. is executor of that testament, and hath the administration thereof granted to him, &c.

Declaration in
debt on a judg-
ment obtained
in the King's
Bench. C. B.

Middlesex, to wit, R. M. late of B. in the county of *Bucks*, Esq; was summoned to answer J. F. clerk, in a plea, that he render to him 302 l. 13 s. which he owes to him and unjustly detains, &c. And whereupon the said J. by R. H. his attorney says, that whereas the said J. heretofore, that is to say, in the term of *Easter* in the 11th year of the reign of the lady *Anne* late queen of *Great Britain*, &c. in the court of the said lady the late queen, before the queen herself at *W.* by bill without the writ of the said late queen, and by the judgment of the same court, recovered against the said R. M. by the name of, &c. 300 l. of debt, and also 53 s. for his damages which he sustained, as well by occasion of the detaining that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said R. is convicted; as by the record and process thereupon, remaining in the court of our lord the present king, before the king himself at *W.* more fully appears: Which said judgment still remains in its full force and effect, no ways reversed, annulled, or in any manner satisfied; and the

the said J. has not yet sued out execution of the said judgment against the said R. Whereby an action has accrued to the said J. to demand and have of the said R. the said 302 l. 13 s. *Nevertheless* the said R. altho' often requested, &c. has not yet rendered the said 302 l. 13 s. to the said J. but to render the same to him has hitherto wholly refused, and still does refuse: Whereupon the said J. says that he is injured, and has damage to the value of 20 l. And thereupon he brings suit, &c.

Cambridge, to wit, T. A. late of H. in the county aforesaid the younger, Gent. was summoned to answer T. A. the elder, Esq; in a plea, that he render to him 2000 l. which he owes him and unjustly detains, &c. And whereupon the said T. A. the elder, by R. D. his attorney says, *That whereas* the said T. A. the younger, on the 10th day of June in the 10th year of the reign of our lord the present king, at the town of C. in the county of C. borrowed of the said T. A. the elder the said 2000 l. to be paid to the said T. A. the elder when he should be thereunto requested: *Nevertheless* the said T. A. the younger, altho' often requested, has not yet rendered the said 2000 l. to the said T. A. the elder, but the same hitherto to render to him has refused, and still does refuse: Whereupon he says that he is injured, and has damage to the value of 20 l. And thereupon he brings suit.

Declaration in debt on a mutuat. C. B. Mich. 10 W. 3. Roll 734.

*Judgment by
Non sum in-
formatus.*

And the said T. A. the younger, by J. R. his attorney comes and defends the force and injury when, &c. And the same attorney says, that he is not informed by the said T. A. the younger of any answer to be given for the said T. A. the younger to the said T. A. the elder in the said plaint; and he says nothing else thereupon: Whereby the said T. A. the elder remains against the said T. A. the younger thereupon undefended: Therefore it is considered that the said T. A. the elder recover against the said T. A. the younger his said debt, and his damages by occasion of the detaining of that debt to 40 s. to the said T. A. the elder, by his assent by the court here adjudged. And the said T. A. the younger in mercy, &c.

*Signed 23 Dec.
anno reg. W. 3.
decimo.*

Mercy.

Satisfaction acknowledged by baron and feme, executrix of the plaintiff. Afterwards, that is to say, on the 30th day of May in the 1st year of the reign of our sovereign lord George now king of Great Britain, &c. came here into court N. W. and M. his wife, executrix of the testament of the said T. A. the elder, Esq; by B. B. their attorney, and bring here into court the letters testamentary of the said T. which it sufficiently appears to the court here, that the said M. is the executrix of the said testament, and has the administration thereof, &c. And the said N. and M. by their said attorney, by special warrant to him in this behalf made, acknowledged, that they are satisfied for the said debt and damages;

Therefore

Therefore be the said *T. A.* the younger quit of the said debt and damages, &c.

—, to wit, *A. B.* late of, &c. Esq; *Declaration in debt against baron and feme, administratrix on a judgment against the intestate, suggesting a devastavit. C.B.* and *E.* his wife, administratrix of all and singular the goods and chattels, rights and credits, which were of *B. C.* at the time of his death, who died intestate lately, called, &c. were summoned to answer *P. B.* of a plea, that they render to him 223 *l.* which they owe him and unjustly detain, &c. And whereupon the said *P.* by *L. R.* his attorney says, that *whereas* the said *P.* lately in the court of our lord the king now here, to wit, in the term of *St. Michael* in the 20th year of the reign of, &c. at *W.* in the county of *M.* by the consideration of the same court recovered against the said *B. C.* in his lifetime, as well a certain debt of 220 *l.* as 60 *s.* which in the same court were adjudged to the said *P.* for his damages which he had by occasion of the detaining that debt whereof the said *B. C.* was convicted, as by the record and process thereupon remaining in the same court here more fully appears; which said judgment still remains in its full force and effect, no ways reversed or annulled; and the said *P.* has not as yet sued out execution against the said *B. C.* upon the said judgment recovered in form aforesaid. *And Devastavit* the said *P.* further says, that divers goods *suggested.* and chattels which were of the said *B. C.* at the time of his death, to the value of the debt and damages aforesaid, at *W.*

aforesaid, have come to the hands of the said *A.* and *E.* to be administred; and that the said *A.* and *E.* afterwards, to wit, on the 20th day of *April* in the 30th year of the reign of, &c. at *W.* wasted the said goods and chattels, and disposed of and converted the same to the proper use of the said *A.* the said *P.* being no ways satisfied of his debt and damages aforesaid:

Actio accrevit. Whereby an action accrued to the said *P.* to demand and have of the said *A.* and *E.* the said 22*3* *l.* Yet the said *A.* and *E.* altho' often requested, have not yet rendered, nor has either of them yet rendered the said 22*3* *l.* to the said *P.* but have hitherto refused, and still do refuse, to render the same to him: Wherefore he says he is injured, and hath damage to the value of 20 *l.* And thereupon he brings suit, &c.

Plea, Plene administravit.

And the said *A.* and *E.* by *T. G.* their attorney come and defend the force and injury when, &c. and say that the said *P.* ought not to have or maintain his said action thereupon against them, because they say that they the said *A.* and *E.* have fully administred all the goods and chattels which were of the said *B. C.* at the time of his death in their hands to be administred; and that they have not, nor on the day of suing out the original writ of the said *P.* nor at any time afterwards, had any goods or chattels which were of the said *B. C.* at the time of his death in their hands to be administred; Without

Transse.

this,

this, that they the said *A.* and *E.* have wasted those goods and chattels, and disposed of and converted the same to the proper use of the said *A.* as the said *P.* has by his said declaration above supposed; And this they are ready to verify: Wherefore they pray judgment, if the said *P.* ought to have and maintain his said action thereupon against them.

And the said *P.* says, that he by any *Replication.*
 thing by the said *A.* and *E.* in pleading above alledged ought not to be barred from having his said action thereupon against them, because he says, as before, that the said *A.* and *E.* have wasted the goods and chattels which were of the said *B. C.* at the time of his death, to the value of the said debt and damages, and disposed of and converted the same to the proper use of the said *A.* as the said *P.* has above declared against them: And this he prays may be inquired of by the country.

Hertfordshire, to wit, *Be it remembered*, Memorandum
 that heretofore, to wit, in the term of *of a declaration*
Easter last past, before our lord the king *tion of a pre-*
 at *W.* came *J. P.* by *J. L.* his attorney, *cedent term.*
 and brought here into the court of our *Hil. 32 & 33*
 said lord the king then there his certain *Car. 2. ro. 45.*
 bill against *R. B.* administrator of all and
 singular the goods and chattels, rights and
 credits, which were of *W. P.* deceased,
 otherwise lately called *W. P.* of *R.* in the
 county of *E.* yeoman, in the custody of
 the marshal, &c. of a plea of debt; and
 there are pledges of prosecuting, to wit,

Declaration in debt on a bond against the administrator of the obligor. *J. D. and R. R. Which said bill follows in these words, to wit, Hertfordshire, to wit, J. P. complains of R. B. administrator of all and singular the goods and chattels, rights and credits, which were of W. P. deceased, otherwise lately called W. P. of R. in the county of E. yeoman, in the custody of the marshal of the Marshalsea of our lord the king, before the king himself, of a plea, that he render to him 16 l. of lawful money of England, which he unjustly detains from him; for that, to wit, that whereas the said W. in his life-time, to wit, on the 19th day of May in the 25th year of the reign of our sovereign lord Charles II. now king of England, &c. at H. in the county aforesaid, by his writing obligatory sealed with the seal of the said W. And to the court of our said lord the king now here shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said J. in the said 16 l. to be paid to the said J. when he should be thereunto afterwards requested: Yet the said W. in his life-time, and the said R. after the death of the said W. altho' often requested, &c. have not paid, nor has either of them paid the said 16 l. to the said J. but the said W. in his life-time, and the said R. after the death of the said W. intirely refused to pay him the same, and the said R. still refuses to pay him the same, and unjustly detains,*

1 Vent. 354.

Profert.

And to the court of our said lord the king now here shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said J. in the said 16 l. to be paid to the said J. when he should be thereunto afterwards requested: Yet the said W. in his life-time, and the said R. after the death of the said W. altho' often requested, &c. have not paid, nor has either of them paid the said 16 l. to the said J. but the said W. in his life-time, and the said R. after the death of the said W. intirely refused to pay him the same, and the said R. still refuses to pay him the same, and unjustly detains,

to

to the damage of the said *J.* of 10 l.
And thereupon he brings suit, &c.

And now at this day, to wit, *Monday Imparlance.*
next after the octave of *St. Hilary* in this
same term, to which day the said *R.* had
leave to imparl to the said bill, and then
to answer, &c. before our lord the king
at *W.* came as well the said *J.* by his said
attorney, as the said *R. B.* by *W. B.* his
attorney, and the said *R.* defends the *Plea, intestate*
force and injury when, &c. and says that *indebted to de-*
the said *J. P.* ought not to have or main- *endant in*
tain his said action thereupon against him; *110 l. for*
because he says, that by a certain inden- *rent on a lease.*
ture made at *H.* in the county aforesaid,
on the 12th day of *February* in the 28th
year of the reign of our sovereign lord
Charles II. now king of *England*, &c.
between the said *R. B.* by the name of
R. B. of the city of *L.* pewterer, of the
one part, and the said *W.* by the name
of *W. P.* of *R.* in the county of *E.* yeoman,
of the other part, *The counterpart of which* *Profert in cur'.*
sealed with the seal of the said *W.* bearing
date the same day and year, the said *R.*
brings here into court, it is witnessed, that
the said *R.* for and in consideration of
the yearly rent and covenants in the same
reserved, and mentioned to be paid, done
and performed, on the part and behalf of
the said *W. P.* his executors, administra-
tors and assigns, as in the same is expres-
sed, and for other good considerations the
said *R. B.* thereunto moving, had demised,
granted, and to farm let, and by the said
indenture

indenture did demise, grant, and to farm let, to the said *W.* all that messuage or farm-house called *Hunter's farm*, otherwise *Hunter's hall*, situate and being in the parish of *Epping* in the county of *Essex*, with all and singular the houses, out-houses, buildings, barns, stables, yards, orchards and gardens thereunto belonging; Except and always reserved out of the said lease to the said *R.* his heirs and assigns, a room in the said messuage called the parlour, and also a room or chamber over the same, with free liberty of ingress, egress and regress, to and for him and them, his and their servants and assigns, into, out of and from the said rooms, at his and their free-will and pleasure, during the said term; and also except and always reserved to the said *R.* his heirs and assigns, all and all manner of woods, underwoods, timber-trees, and all other trees whatsoever, and the lops, tops and shreddings of them and every of them, and all hedge-rows standing, growing or being, or which at any time after during the said term by the said indenture granted should stand, grow or be in or upon the said demised premisses, or any part or parcel thereof, with free liberty of ingress, egress and regress, to and for the said *R.* his heirs and assigns, with servants, labourers, horses, carts and carriages, at times convenient in the year to fell, cut down, grub up, square and saw the same, at his and their free-will and pleasure, leaving

leaving and allowing wood and timber for botes and firewood; To have and to hold the said messuage or farm, lands and premisses, in the said indenture before mentioned to be demised and granted, with their and every of their appurtenances, (except as before excepted) to the said *W.* his executors, administrators and assigns, from the feast-day of the annunciation of the blessed virgin *Mary* then next ensuing the date of the said indenture, unto the full end and term of seven years thence next ensuing, and fully to be complete and ended: Yielding and paying therefore yearly and every year, during the said term, to the said *R.* his heirs or assigns, the yearly rent or sum of 44 *l.* of lawful money of *England*, at the two most usual feasts or days of payment in the year, to wit, at the feast of *St. Michael* the archangel, and the annunciation of the blessed virgin *Mary*, by equal portions; as by the said indenture, amongst other things, more fully appears. By virtue of which said lease the said *W.* afterwards, to wit, on the morrow of the said feast of the annunciation of the blessed virgin *Mary* next after the date of the said indenture, entered into the said demised premisses, with the appurtenances, and was possessed thereof, and had, held, occupied and enjoyed the said demised premisses, from the said feast of the annunciation of the blessed virgin *Mary* last mentioned, until and after the feast of *St. Michael* the archangel
in

in the 30th year of the reign of our said lord the present king; and afterwards, to wit, on the 23d day of *December* in the 30th year aforesaid, being so possessed thereof, at *H.* aforesaid in the county aforesaid, died intestate: After whose death, to wit, on the last day of *February* in the 31st year of the reign of our said lord the present king, at *H.* aforesaid in the county aforesaid, administration of all and singular the goods and chattels, rights and credits, which were of the said *W.* was in due manner committed by *H.* by divine permission bishop of *London*, to the said *R.* And the said *R.* in fact says, that at the said feast of *St. Michael* last mentioned, 110 *l.* of rent for the said premisses were due and in arrear to the said *R.* and were unpaid at the time of the death of the said *W.* and that he the said *W.* upon the said feast of *St. Michael*, or at any time afterwards, did not pay the said 110 *l.* or any part thereof, nor cause the same or any part thereof to be paid to the said *R.* And the said *R.* further says, that the said *W. P.* in his life-time, to wit, on the 12th day of *February* in the 28th year of the reign of our said sovereign lord *Charles II.* now king of *England*, &c. at *H.* aforesaid in the county aforesaid, by his writing obligatory sealed with the seal of the said *W.* Which the said *R.* brings here into court, the date whereof is on the same day and year, became held and bound to the said *R.* in 100 *l.*
of

Intestate indebted to defendant on a bond in 100 l.

Profert.

of lawful money of *England*, to be paid to the said R. when he should be thereunto afterwards requested. And the said R. further says, that as well the said 110 *l.* for the rent aforesaid, as the said 100 *l.* mentioned in the said writing obligatory, at the time of the death of the said W. and after his death, were true and just debts, and truly and justly due to the said R. and then and still unpaid to the said R. And that divers goods and chattels which were of the said W. at the time of his death, to the value of 64 *l.* 17 *s.* and 6 *d.* and no more, after the death of the said W. came to the hands of the said R. as administrator as aforesaid: *Which* said goods and chattels the said R. retains in his own hands, in satisfaction of the said debts due to the said R. by the said W. in his life-time, in form aforesaid. *And* the said R. further says, that he has fully administred all the goods and chattels which were of the said W. at the time of his death in the hands of the said R. to be administred; and that he has no goods and chattels which were of the said W. at the time of his death in his hands to be administred, nor had on the day of exhibiting the said bill, nor at any time afterwards, except goods and chattels to the value aforesaid, which are not sufficient to satisfy the said debts, and which are bound and charged with the payment of the said several debts; And this he is ready to verify: Wherefore he prays judgment if the said

Affets only to
64 *l.* 17 *s.* 6 *d.*

Which defen-
dant retains.

Plene admi-
nistravit.

W. P. (*the intestate*) named in the indenture and bond, and W. P. named in the declaration, are the same person.

saïd J. ought to have or maintain his saïd action thereupon against him, &c. *With this*, that the saïd R. will verify that the saïd W. P. in the saïd indenture and writing obligatory named, and the saïd W. P. in the declaration of the saïd J. named, are one and the same person, and not other nor different.

*Replication,
Oyer of the
bond and con-
dition.*

*Bond condi-
tioned for per-
formance of
the covenants
in the lease.*

And the saïd J. prays oyer of the saïd writing obligatory, and it is read to him; and he also prays oyer of the condition of the saïd writing obligatory, and it is read to him in these words, *to wit*, The condition of this obligation is such, that if the above-bounden W. P. his heirs, executors, administrators and assigns, do and shall from time to time, and at all times hereafter, well and truly pay, observe, perform, fulfil, hold and keep all and singular the covenants, grants, articles, provisoes, promises, conditions and agreements, which in his and their parts and behalf are and ought to be paid, observed, performed, fulfilled, held and kept, comprized, specified and declared, in and by one pair of indentures of lease bearing the date above written, made between the above-named R. B. of the one part, and the saïd W. P. of the other part, and that in and by all other things, according to the tenor, effect and true meaning of the same indentures of lease; then this obligation shall be void, or else it shall stand in full force: Which being read and heard, the saïd J. says, that he by any thing by the

the said R. above by pleading alledged, ought not to be barred from having his said action thereupon against him; *Because* Protestando that the assets are above the value of 64 l. 17 s. 6 d. protesting, that the goods and chattels which were the goods and chattels of the said W. at the time of his death, and came to the hands of the said R. to be administred, were of greater value than the sum of 64 l. 17 s. and 6 d. *And also* And that defendant hath assets sufficient, &c. protesting, that he the said R. had divers goods and chattels, which were the goods and chattels of the said W. at the time of his death, sufficient to satisfy the said J. his said debt, and also to satisfy the said R. as much money and more as was due to the said R. by the said W. in his lifetime: *For plea*, the said J. says, that the said indenture in the said plea above mentioned, is the same indenture which is mentioned in the condition of the said writing obligatory. *And* the said J. further says, that the said W. at the time of his death was not indebted to the said R. for the said rent in the said plea of the said R. above mentioned above the sum of 30 l. Says the indenture mentioned in the plea, and in the condition of the bond, are the same; and that the intestate was not indebted to the defendant for rent in above 30 l. And this he is ready to verify: Wherefore he prays judgment, and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c.

And the said R. says, that the said plea of the said J. above by replying pleaded, in manner and form aforesaid, and the matter therein contained, are not suffi- Demurrer.

sufficient in law to maintain the said action of the said *J.* against the said *R.* To which the said *R.* has no need, neither is he bound by the law of the land in any manner to answer; And this he is ready to verify: Wherefore for default of a sufficient replication in this behalf, the said *R.* as before prays judgment, and that the said *J.* may be barred from having his said action thereupon against the said *R.* *&c.* And for cause of demurrer in law upon the said plea, the said *R.* according to the form of the statute in such case made and provided, declares, and to the court here shews these causes following, to wit, that the said plea is double and incertain, and for that the said plea wants form, *&c.*

Joinder.

And the said *J.* says, that the said plea of the said *J.* above by replying pleaded in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to maintain the said action of the said *J.* against the said *R.* which said plea, and the matter therein contained, the said *J.* is ready to verify and prove as the court, *&c.* And because the said *R.* does not answer the said plea, nor has as yet any ways denied it, the said *J.* as before prays judgment, and his said debt, together with his damages by occasion of the detaining that debt to be adjudged to him, *&c.* But because the court of our said lord the present king here

Continuance by
Cur. advisar.
vult.

here is not yet advised of giving their judgment of and upon the premisses, day is thereupon given to the said parties before our lord the king at *W.* until *Wednesday* next after fifteen days of *Easter*, to hear their judgment of and upon the premisses, for that the court of our said lord the present king here is not yet, &c. At which day, before our said lord the king at *W.* the said parties came by their attornies aforesaid. *But* because the court *Continuance.* of our said lord the present king here is not yet advised of giving their judgment of and upon the premisses, day is therefore given to the said parties before our lord the king at *W.* until *Friday* next after the morrow of the *Holy Trinity*, to hear their judgment thereupon, for that the court of our said lord the present king here is not yet, &c. At which day, before our lord the king at *W.* the said parties come by their attornies aforesaid. *But* because the court of our said lord the *Continuance.* present king here is not yet advised of giving their judgment of and upon the premisses, day is therefore given to the said parties, before our lord the king at *W.* until *Tuesday* next after three weeks of *St. Michael*, to hear their judgment thereupon, for that the court of our said lord the present king here is not yet, &c. At which day, before our lord the king at *W.* the said parties came by their attornies aforesaid. *Whereupon* the court having *Judgment for* Vol. II. U *seen the plaintiff.*

Pro mis. 6 l.
13 s. and 4 d.
4 Nov. 1681.

Satisfaction
acknowledged.

seen and fully understood all and singular the premisses, and having maturely deliberated thereupon, for that it appears to the court of our said lord the present king here, that the said plea of the said J. above by replying pleaded in manner and form aforesaid, and the matter therein contained, are good and sufficient in law for the said J. to have and maintain his said action against the said R. It is considered, that the said J. P. recover against the said R. B. his said debt, and also 6 l. 13 s. and 4 d. for his damages, which he has sustained as well by occasion of detaining that debt, as for his costs and charges by him expended about his suit in this behalf, adjudged to the said J. by the court of our said lord the present king here, with his assent to be levied of the goods and chattels which were of the said W. P. at the time of his death in the hands of the said R. to be administered, if he has so much in his hands; and if he has not so much in his hands, then the said damages to be levied of the proper goods and chattels of the said R. And the said R. in mercy, &c. Afterwards, to wit, on Monday next after fifteen days of St. Martin in this same term, before our lord the king at W. the said J. P. came by J. L. his attorney and acknowledged himself to be satisfied of the said debt and damages: Therefore the said R. is quit of the said debt and damages, &c.

London,

London, to wit, *H. P.* clerk, and *M.* Declaration in
 his wife, lately called *M. B.* complain of debt by baron
P. L. Esq; and *E.* his wife, executrix of and feme a-
 the testament and last will of *A. C.* late gainst baron
 father of the said *E.* deceased, otherwise cutrix, on a
 called, &c. in the custody of the marshal, bill made by
 &c. of a plea, that they render to them the testator to
 200 *l.* which they unjustly detain from the feme while
 them; For that, to wit, that whereas the sole, for the
 said *A.* in his life-time, to wit, on the payment of 20 *l.*
 1st day of *December* in the year of our per annum.
 Lord 1674. at *L.* aforesaid, to wit, in 2 Salk. 749.
 the parish of *St. Mary le Bow* in the ward
 of *Cheap*, by his certain writing obligatory
 sealed with the seal of the said *A.* in his
 life-time, And to the court of our said Profert;
 lady the queen now here shewn, the date
 whereof is on the same day and year,
 bound himself, his heirs, executors and
 administrators, in the penal sum of 200 *l.*
 of lawful money of *England*, to pay to
 the said *M.* (by the name of *Mrs. M. B.*
 daughter of *F. B.* of *L.* aforesaid, and of
M. his wife) the sum of 20 *l.* a year, by
 equal portions, at or upon the four most
 usual feast-days in the year, to wit, on
 the nativity of our Saviour, the annun-
 ciation of the virgin *Mary*, the feast-day
 of *St. John* the baptist, and the feast of
St. Michael the archangel, by 5 *l.* for
 every quarter of a year; the first pay-
 ment to begin upon the feast of *St. John*
 the baptist next ensuing the date of the
 said writing; which said sum of 20 *l.*
 should be paid at the then dwelling-house

One quarter
due.

Actio accrevit.

of the said *F. B.* father of the said *M.* for the term of six years next ensuing the first payment, if the said *M.* the now plaintiff should live so long. And the said *H.* and *M.* in fact say, that 5 *l.* for one quarter of one year ended at the feast of *St. Michael* the archangel in the year of our Lord 1679. were due, in arrear and unpaid by the said *A.* in his life-time to the said *M.* the now plaintiff while she was sole, and still are due, in arrear and unpaid: *Whereby* an action accrued to the said *M.* whilst she was sole, to demand and have of the said *A. C.* in his life-time, and also to the said *H.* and *M.* after the marriage between them celebrated, to demand and have of the said *P.* and *E.* after the death of the said *A.* the said 200 *l.* Yet the said *A.* in his life-time, and whilst the said *M.* was sole, altho' often requested, &c. thereunto by the said *M.* and the said *P.* and *E.* after the death of the said *A.* altho' often requested, &c. thereunto by the said *M.* whilst she was sole, and by the said *H.* and *M.* after the marriage between them celebrated, have not paid, nor has either of them paid the said 200 *l.* to the said *M.* whilst she was sole, or to the said *H.* and *M.* or to either of them, after the marriage between them celebrated, but they intirely refused, and the said *P.* and *E.* still intirely refuse to pay them the same, to the damage of the said *H.* and *M.* of 40 *l.* And thereupon they bring suit, &c.

Cumber-

Cumberland, to wit, *R. W.* late of, *Esq.* Declaration in
 son and heir of *W. W.* deceased, otherwise ^{debt on a bond,}
 called, *Esq.* and *B. W.* late of the same, ^{against the}
 widow, devisee of the said *W.* of divers ^{heir and de-}
 of his lands and tenements, were sum- ^{visee of the} obligor. *C. B.*
 moned to answer to *E. S. Esq.* in a plea,
 that they render to the said *E.* 100 *l.*
 which they owe to and unjustly detain
 from him, *Esq.* And whereupon the said
E. by *T. B.* his attorney saith, that
 whereas the said *W.* the father of the said
R. (of whom the said *R.* is son and heir,
 and the said *B.* is devisee as aforesaid)
 in his life-time, to wit, the 2d day of
September in the 6th year of the reign of
 his present majesty, at *W.* aforesaid, by
 a certain writing obligatory acknowledged
 himself to be bound to the said *E.* in 100 *l.*
 to be paid to the said *E.* when he the said
W. should be thereunto required; and the
 said *W.* did by the said writing obligatory
 bind himself and his heirs well and faith-
 fully to make the said payment: *Never-*
theless the said *W.* in his life-time, or the
 said *R.* and *B.* (which said *R.* is son and
 heir of the said *W.* and which said *B.* is
 devisee of the said *W.* of divers of his
 lands and tenements as aforesaid, by his
 last will made at *W.* aforesaid, after the
 25th day of *March* in the year of our Lord
 1692. whereof the said *W.* at the time of
 his decease had a power of disposing by
 his said last will) after the death of the
 said *W.* (altho' often requested) have nor,
 nor hath any of them rendered to the said

Profert.

*Judgment by
Nil dicit a-
gainst the heir.*

*Plea, not de-
visee.*

E. the said 100 *l.* or any part thereof; but they have wholly denied, and the said *R.* and *B.* still do deny to render the same to the said *E.* Whereby the said *E.* saith that he is prejudiced and damnified to the value of 10 *l.* And thereupon he bringeth suit, &c. And he bringeth here into court the said writing obligatory, which testifieth the debt aforesaid in form aforesaid, the date whereof is the day and year in that respect above-mentioned, &c.

And the aforesaid *R.* in his own proper person comes and defends the force and injury when, &c. and says nothing in bar or preclusion of the aforesaid action of the aforesaid *E.* whereby the said *E.* remains against the said *R.* thereof undefended: Therefore it is considered, that the said *E.* recover against the said *R.* his debt aforesaid, and his damages by reason of detaining that debt to 80 *s.* by the court here adjudged to the said *E.* by his assent, according to the form of the statute in such case made and provided. And the said *R.* in mercy, &c.

And the said *B.* by — her attorney comes and defends the force and injury when, &c. and saith that she ought not to be charged with the said debt by virtue of the said writing obligatory, because she says that she is not devisee of the said *W.* of any of his lands and tenements, as by the said declaration is above supposed: And of this she puts herself upon the country, &c.

Of

*Of Easter Term in the Sixteenth
Year of the Reign of King George
the Second.*

*To the Justices of our Lord the
King of the Bench.*

Middlesex; **H.** B. spinster, by **J. S.** her Bill in debt on
to wit, attorney complains of **H.** a bond against
V. Esq; otherwise called, &c. (he having a member of
privilege of parliament) of a plea that he C. B.
render to her [as in a bill against an at-Lil. Ent. 501.
torney in debt on a bond to] brings suit, &c.

And hereupon the said **H.** prays process Process prayed.
of the lord the king, according to the form Stat. 8 & 9
of the statute in such case made and pro- W. 3.
vided, to be made to her thereupon: And
it is thereupon granted to her, &c. And Profer of the
she brings here into court the writing obli- bond.
gatory afore said, which testifies the debt
afore said in form afore said, the date
whereof is the day and year afore said, &c.

Pledges of prosecuting } J. D.
and
R. R.

GEORGE the Second, &c. To the Writ of sum-
sheriff of **M.** greeting. We command mons thereon.
you, that you summons **H. V.** Esq; other- Lil. Ent. 501,
wise called, &c. (the said **H. V.** having 670.
privilege of parliament) that he be before
our justices at **W.** on *Monday* next after
the morrow of the ascension of our Lord,
to answer to **H. B.** spinster, of a plea that

he render to her 840 l. which he owes to her and unjustly detains, &c. for that whereas [*Verbatim as in the bill to*] the damage of the said *H.* of 20 l. as it is said: And have you there this writ. Witness, &c.

*Distingas
thereon.*

Lil. Ent. 569.

GEORGE the Second, &c. To the sheriff of *M.* greeting. We command you, that you distrain and attach *H. V.* Esq; otherwise called, &c. (the said *H. V.* having privilege of parliament) by all his lands and chattels in your bailiwick, so that neither he nor any one through him put his hands thereon until you shall have other command from us; and that of the issues thereof you answer to us, so that he be before our justices at *W.* on *Friday* next after the morrow of the *Holy Trinity*, to answer to *H. B.* spinster, of a plea that he render to her 840 l. which he owes to her, and unjustly detains from her, &c. For that whereas [*Verbatim as in the bill to*] damage of the said *H.* of 20 l. as it is said, and to hear his judgment for many defaults: And have you there this writ. Witness, &c.

*Memorandum
of a bill of a
precedent term.
Trin. 2 Jac. 2.
ro. 121.*

Cheshire, to wit: *Be it remembered*, that heretofore, that is to say, in the term of *Easter* last past, before our lord the king at *W.* came *G. J.* by *J. L.* his attorney and brought here in the court of our said lord the king then there his certain bill against *T. H.* and *T. H.* executors of the testament and last will of *E. H.* deceased, lately called *E. H.* of the town of *M.* in the

the county of C. tanner, in the custody of the marshal, &c. of a plea of debt; and there are pledges of prosecuting, namely, J. D. and R. R. Which said bill followeth in these words, to wit, *Cheshire, Declaration in*
to wit, G. J. complains of T. H. and T. H. *debt on a bond*
executors of the testament and last will of *against the*
E. H. deceased, lately called E. H. of the *executors of*
town of M. in the county of C. tanner, B. R. *the obligor.*
in the custody of the marshal of the Mar- Carth. 11.
shalsea of our lord the king, before the 3 Mod. 114.
king himself, of a plea that they render
to him 40 l. of lawful money of *England*,
which they owe him and unjustly detain;
For that, that is to say, that whereas the
said E. in his life-time, that is to say, on
the 11th day of *December* in the 34th year
of the reign of the lord *Charles II.* late
king of *England*, &c. at T. in the county
aforesaid, by his certain writing obligatory
sealed with the seal of the said E. in his
life-time, and to the court of our said *Profert.*
lord the now king here shewn, the date
whereof is on the same day and year, ac-
knowledged him to be held and firmly
bound to the said G. in the said 40 l. to
be paid to the said G. when he should be
thereunto requested: *Nevertheless* the said
E. in his life-time, and the said T. and T.
after the death of the said E. altho' often
requested, &c. have not paid the said 40 l.
to the said G. but hitherto to pay him the
same have intirely refused, and the said
T. and T. still wholly refuse to pay him
the same, and unjustly detain, to the da-
mage

mage of the said G. of 100 s. And thereof he brings suit, &c.

Imparlanct.

And now at this day, that is to say, on *Friday* next after the morrow of the *Holy Trinity* in this same term, to which day the said T. and T. had leave to imparl to the bill aforesaid, and then to answer thereunto before our lord the king at W. come as well the said G. by his attorney aforesaid, as the said T. and T. by M. J. their attorney; And the said T. and T. defend the wrong and injury when, &c. and say, that the said G. ought not to have or maintain his said action thereof against them; because they say, that they the said T. and T. before the day of exhibiting of the said bill, had fully administered all the goods and chattels which were of the said E. H. at the time of his death; and that they have no goods and chattels which were of the said E. H. at the time of his death in their hands to be administered, nor had they on the day of exhibiting of the said bill, nor at any time afterwards; And this they are ready to verify: Wherefore they pray judgment, if the said G. ought to have or maintain his said action thereof against them, &c.

*Pla, Plene
administravit.*

Replication.

And the said G. says, that he by any thing by the said T. and T. above in pleading alledged, ought not to be precluded from his said action thereof against the said T. and T. because he says that the said T. and T. have, and on the day of exhibiting of the said bill, that is to say, on the 21st day

day of *April* in the 2d year of the reign of our lord *James II.* now king of *England*, &c. had divers goods and chattels which were of the said *E. H.* at the time of his death in their hands to be administered, to the value of the debt aforesaid, whereof they could have satisfied the said *G.* for his debt aforesaid, to wit, at *T.* in the county aforesaid; And he prays that this may be inquired of by the country:

And the said *T.* and *T.* do the like, &c. *Issue.*

And because the said issue above joined *Mittimus to the county palatine.* between the said parties ought to be tried by men of the county palatine of *C.* that is to say, by men of the neighbourhood of *T.* aforesaid in the said county of *C.* where the writ of our lord the king runs not, and not elsewhere; Therefore the record of the said plaint is sent to the justices of the said lord the king of the said county of *C.* so that the said justices, by writ of our said lord the king of that county to be duly made, cause it to be commanded to the sheriff of the same county, that he cause to come before the said justices of our said lord the king of the said county of *C.* at the next sessions for the said county after the said record shall be delivered to them, twelve free and lawful men of the neighbourhood of *T.* aforesaid in the said county of *C.* By whom, &c. And who neither, &c. To recognize, &c. Because as well, &c. when the verification and issue aforesaid shall be made and tried, that then the said justices send

send to our lord the king at *W.* the record of the said plaint, with the whole thereof which shall be done thereupon in the court of our said lord the king there before them, at a certain day which the said justices of the county palatine aforesaid in the same court there shall prefix to the said parties to hear judgment thereupon, &c. And it is told to the said G. that he sue with effect at his peril, &c.

*Declaration in
debt on a bond
contained in a
deed for per-
formance of an
agreement in
that deed. B.R.*

London, to wit, *J. F. N.* and *J. F. N.* complain of *G. D. Esq;* otherwise called the right honourable *G. marquis D.* being in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself, of a plea that he render to them *17,100 l.* of lawful money of *G. B.* which he owes them and unjustly detains; *For that*, to wit, *that whereas* by a certain writing of agreement made at *L.* aforesaid, to wit, in the parish of, &c. on the 29th day of *August* in the year of our Lord 1720. reciting, that whereás the said *I.* and *J.* for the consideration in the said writing mentioned, had bargained and sold to the said *G.* 900 *l.* interest or credit in the principal capital stock and fund of the governor and company of merchants of *Great Britain*, trading to the *South Seas* and other parts of *America*, and for encouraging the fishery, &c. Which said 900 *l.* stock they the said *I.* and *J.* for themselves, their executors, administrators and assigns, covenanted, promised and agreed to transfer, or cause to be transferred,

ferred, to the said G. his executors, administrators or assigns, within fourteen days next after the opening of the transfer-books after the *Christmas* dividend next ensuing the date thereof; And the said G. by the said writing covenanted, promised and agreed for himself, his executors and administrators, on the transferring the said 900 *l.* stock, to pay, or cause to be paid, to the said I. and J. their executors, administrators or assigns, for the said stock, the sum of 8550 *l.* of lawful money of G. B. and by the said writing it is mentioned that it was mutually agreed by and between the said parties, that the last *Midsummer* dividend, and all other dividends, profits and commodities whatsoever, which should arise or become due upon account of the said 900 *l.* stock, should be and remain to and for the proper use, benefit and advantage of the said G. his executors, administrators and assigns. And for the true observance and performance of the said agreement on the part of the said G. to be performed, the said G. by the said writing bound himself, his heirs, executors and administrators, to the said I. and J. their heirs, executors and administrators, in the penal sum of 17,100 *l.* as by the said writing, *Which* the said I. Profert. and J. under the seal of the said G. bearing date the same 29th day of *August* in the year aforesaid, bring here into court, more fully appears. And the said I. and J. in fact say, that the said transfer-books, after

after the *Christmas* dividend made by the company next after the date of the said writing, were opened upon the 1st day of *May* in the year of our Lord 1721. at *L.* aforesaid; *And* that the said *I.* and *J.* within 14 days next after the opening the said books, that is to say, on the 12th day of *May* in the year of our Lord 1721. the said 12th day being a transfer-day from eleven of the clock in the forenoon until one of the clock in the afternoon of the same day, at the office of the said company, in a certain room called the transfer-room, at *L.* aforesaid, were ready to transfer to the said *G.* the said 900 *l.* stock in the transfer-books of the said company, and then and there offered to transfer the said 900 *l.* to the said *G.* in the said books, but neither the said *G.* nor any one on his behalf then came or was present to accept the said stock; nor did the said *G.* then or at any other time pay to the said *I.* and *J.* or to either of them, the said 8550 *l.* for the said stock, according to the said agreement. *And* the said *I.* and *J.* say, that the usual manner of transferring stock in the capital stock or fund of the governor and company aforesaid, was on the same 12th day of *May*, and long before had been, by transferring such stock in the said books at the said office, in the room aforesaid, on transfer-days, at any time between nine of the clock in the forenoon, and one of the clock in the afternoon; *Whereby* an action accrued to the

the said *I.* and *J.* to demand and have of the said *G.* the said 17,100 *l.* *Nevertheless* the said *G.* altho' often requested, has not paid the said 17,100 *l.* or any part thereof, to the said *I.* and *J.* or either of them, but has intirely refused, and does still refuse to pay the same to them, to the damage of the said *I.* and *J.* of 100 *l.* And thereof they bring suit, &c.

And the said *G.* by *J. H.* his attorney *Plea, Non* comes and defends the wrong and injury *debet.* when, &c. and says that he does not owe to the said *I.* and *J.* the said 17,100 *l.* or any part thereof, in manner and form as the said *I.* and *J.* above complain against him; And of this he puts himself upon the country: And the said *I.* and *J.* *Issue.* do the like. *Therefore, &c.*

Middlesex, to wit, *C. B.* late of the *Inner* *Declaration in* *Temple, London, Gent.* otherwise called *debt on a bail-* *bond. C. B.* *C. B.* of the *Inner Temple, London, Gent.* was summoned to answer *A. C.* assignee of Sir *R. H. Knt.* and *E. B. Esq;* late sheriff of the said county of *M.* according to the form of the statute in such case lately made and provided, of a plea, that he render to her 20 *l.* which he owes her, and unjustly detains, &c. And whereupon the said *A. C.* by *J. B.* her attorney says, that *whereas* one *W. L.* after the 1st day of the term of the *Holy Trinity* in the year of our Lord 1706. to wit, on the 4th day of *April* in the 10th year of the reign of our lord the present king, at *W.* in the said county of *M.* was in due manner

manner arrested by the said Sir R. H. and E. B. (being sheriff of the said county of M.) by virtue of a certain writ of our lord the present king of *Capias ad respondendum*, directed to the sheriff of the county of M. and out of the court of our said lord the present king (the same being then here, to wit, at W. in the county of M.) before that time in due manner issued and returnable here from the day of *Easter* in fifteen days then next ensuing, at the suit of the said A. C. of a plea of trespass, and also in a certain plea of debt, upon demand 10 l. And whereas the said Sir R. H. and E. B. (being sheriff of the county of M. aforesaid) took bail from the said W. L. of and upon the said arrest for his appearance, according to the tenor of the said writ; to wit, the said W. L. one W. B. and the said C. B. (as bail for the said W. L.) on the said 4th day of *April* in the said 10th year of the reign of our said lord the present king, at W. aforesaid, by their certain writing obligatory jointly and severally allowed themselves to be held and firmly bound to the said Sir R. H. and E. B. (being sheriff of the said county of M.) by the name of Sir R. H. and E. B. sheriff of the said county of M. in the said 20 l. to be paid to the said sheriff or his assigns, when they the said W. L. W. B. and C. B. or either of them, should be thereunto requested, with a condition to the said writing obligatory underwritten, that if he the said W. L. should appear before

before the justices of our said lord the king at *W.* from the day of *Easter* in fifteen days, to answer to the said *A. C.* of a plea of trespass, and also in a certain plea of debt upon demand 10 *l.* that then the said obligation should be void and of no force, otherwise it should stand and remain in its full strength, force and effect, as by the said writing obligatory, and the condition thereof (relation being thereunto had) may more fully appear. And the said *A. C.* in fact says, that the said *W. L.* did not appear before the justices of our said lord the present king here, to wit, at *W.* aforesaid, from the day of *Easter* in fifteen days, in the said condition mentioned, according to the form and effect of that condition, by reason whereof the said writing obligatory became forfeited. And the said *A. C.* in fact says, that afterwards, to wit, on the 19th day of *May* in the year of our Lord 1724. at *W.* aforesaid, the said Sir *R. H.* and *E. B.* (being sheriff of the said county of *M.*) by the name of Sir *R. H. Knt.* and *E. B. Esq;* sheriff of the county of *M.* within named, at the request of the said *A. C.* the plaintiff in that suit, by his indorsement in due manner assigned the said writing obligatory to the said *A. C.* according to the form of the statute in such case made and provided, by then and there indorsing the said writing obligatory, and attesting the same under his hand and the

seal of his office of sheriff of the county of *M.* afore said, in the presence of two credible witnesses, to wit, of *C. T.* and *J. C.* according to the form of the said statute, the said 20 *l.* in the said writing obligatory contained then and there being unpaid, whereof the said *C. B.* then and there had notice; whereby and by force of the premisses, and also by force of the said statute, an action accrued to the said *A. C.* as assignee of the said *Sir R. H.* and *E. B.* sheriff of the said county of *M.* to demand and have of the said *C. B.* the said 20 *l.* Yet the said *C. B.* altho' often required, has not yet rendered the said 20 *l.* to the said *Sir R. H.* and *E. B.* or to the said *A. C.* or either of them, but has hitherto altogether refused to render the same to them or to either, and yet doth refuse to render the same to the said *A. C.* and the said 20 *l.* still remain unpaid: Wherefore she says she is the worse, and hath damage to the value of 10 *l.* And thereupon she brings suit, &c. And she brings here into court as well the said writing obligatory which testifies the said debt in form afore said, the date whereof is the 4th day of *April* in the said 10th year of the reign of our said lord the present king, as the said indorsed writing thereupon, the date whereof is the said 19th day of *May* in the year of our Lord 1724. afore said, whereby the said *A. C.* sufficiently appears to the court here to be assignee of the

Profert.

the said sheriff of the debt and writing obligatory aforesaid, and thereof to have her said action, &c.

Suffex, to wit, *Be it remembered*, that Memorandum
heretofore, to wit, in the term of the *of a declara-*
Holy Trinity last past, before our lord the *tion of a pre-*
king at *W.* came *H. G. Esq;* by *N. T.* his *cedent term.*
attorney, and brought here into the court
of our said lord the king then there his
certain bill against *E. A.* widow, admini-
stratrix of all and singular the goods and
chattels, rights and credits, which were of
J. A. Gent. deceased, who died intestate,
lately called *J. A.* of *R.* otherwise *E.* in
the county aforesaid, Gent. in the custody
of the marshal, &c. of a plea of debt;
And there are pledges of prosecuting,
to wit, *J. D.* and *R. R.* Which said bill
follows in these words, to wit, *Suffex*, to *Declaration in*
wit, *H. G. Esq;* complains of *E. A.* widow, *debt for rent,*
administratrix of all and singular the goods, *upon articles*
and chattels, rights and credits, which *against an ad-*
were of *J. A. Gent.* deceased, who died *ministratrix.*
intestate, lately called *J. A.* of *R.* other- *Salk. 325.*
wise *E.* in the county aforesaid, Gent. in *Carth. 511.*
the custody of the marshal of the *Ca. B. R. 288;*
Marshalsea of our lord the king, before the
king himself, of a plea, that she render
to him 60 *l.* of lawful money of *England*,
which she unjustly detains from him;
For that, to wit, that *whereas* by certain
writing of articles made at *H.* in the county
aforesaid, on the 11th day of *January* in
the year of our Lord 1689. between the
said *H.* by the name of *H. G.* of *B.* within

Profert.

Habendum.

Reddendum.

Testator entered.

Rent accrued.

the parish of *E. G.* in the county of *S. Esq;* of the one part, and the said *J.* by the name of *J. A.* of *R.* otherwise *E.* in the county aforesaid, Gent. of the other part; *The* counterpart whereof, sealed with the seal of the said *J.* the said *H.* brings here into court, bearing date the same day and year the said *H.* demised to the said *J. A.* all those two several pieces or parcels of land called the *Deans*, containing by estimation 22 acres, with the appurtenances, in *H.* aforesaid in the county aforesaid; and also all those four pieces of marsh-land called *H. marsh*, containing by estimation 32 acres, with the appurtenances, in *H.* aforesaid; *To hold* to the said *J. A.* his executors and administrators, from the feast of the birth of our Lord then last past for eleven years, *At* and under the yearly rent of 30 *l.* to be paid half-yearly during the said term, *to wit*, at the feasts of *St. John* the baptist, and the birth of our Lord, by equal portions, or within one and twenty days after the said feasts, as by the said writing more fully appears. *By virtue* of which said demise the said *J. A.* entered into the said premisses, with the appurtenances, and was possessed thereof until and on the feast of the birth of our Lord in the year of our Lord 1696. and by 21 days thence next ensuing. *And* 60 *l.* of the said rent for two years ended at the said feast of the birth of our Lord in the year 1696. and by 21 days thence next ensuing, were in arrear in the life of

of the said *J.* and are still unpaid: *Whereby* *Actio accrevit.*
 an action accrued to the said *H.* to demand
 and have of the said *J.* in his life-time,
 and of the said *E.* after the death of
 the said *J.* (*To which* said *E.* administra- *Administration*
 tion of all and singular the goods and *committed to*
 chattels, rights and credits, which were *defendant.*
 of the said *J.* at the time of his death,
 after his death was committed at *H.* afore-
 said in the county aforesaid) the said 60 *l.*
Yet the said *J.* in his life-time, and the
 said *E.* after his death, altho' often re-
 quested, &c. have not yet paid the said
 60 *l.* to the said *H.* but they have hi-
 therto intirely refused, and the said *E.*
 still refuses to pay him the same, to the
 damage of the said *H.* of 20 *l.* And there-
 upon he brings suit, &c.

And now at this day, to wit, *Monday* *Impar lance.*
 next after the octave of *St. Hilary* in this
 same term, until which day the said *E.*
 had licence to imparl to the said bill, and
 then to answer, &c. before our lord the
 king at *W.* came as well the said *H. G.*
 by his said attorney, as the said *E.* by
J. L. her attorney; *And* the said *E.* de-
 fends the force and injury when, &c.
And as to 30 *l.* parcel of the said 60 *l.* in *As to part,*
 the said declaration mentioned to be in *Non detinet.*
 arrear of the said rent for the first year
 of the said two years, the said *E.* says
 that she does not detain from the said *H.*
 the said 30 *l.* nor any parcel thereof, in
 manner and form as the said *H.* above
 complains against her; *And* of this she

Issue.

As to the residue, a bond entered into by the intestate to the defendant before their marriage to leave her 1000 l. at his death.

Profert.

puts herself upon the country: *And* the said *H.* does so likewise, &c. *And* as to the other 30 l. residue of the said 60 l. the said *E.* says, that the said *H. G.* ought not to have or maintain his said action thereupon against her, because she says, that in the life-time of the said *J.* and whilst she the said *E.* was sole, to wit, on the 20th day of *January* in the year of our Lord 1686. at *H.* aforesaid in the county aforesaid, he the said *J. A.* by the name of *J. A.* of *R.* in the county of *S. Gent.* by his certain writing obligatory sealed with the seal of the said *J.* *And* to the court of our said lord the king now here shewn, bearing date the said 20th day of *January* in the year of our Lord 1686. aforesaid, acknowledged himself to be held and firmly bound to the said *E.* whilst she was sole, then by the name of *R. R.* of *R.* in the county aforesaid, spinster, in 2000 l. of lawful money of *England*, to be paid to the said *E.* when he should be afterwards thereunto required, with a condition to the said writing obligatory underwritten, reciting, that whereas a marriage was by the blessing of God in a short time to be solemnized between the said *J. A.* and her the said *E.* so that if the said *E.* should survive the said *J.* and that the said *J.* should die before the said *E.* then if the said *J. A.* should leave, or if his heirs, executors or assigns should well and truly pay, or cause to be paid to the said *E.* her executors,
admi-

administrators or assigns, the full and intire sum of 1000 l. of lawful money of *England*, within one month after the death of the said *J. A.* without fraud or deceit, that then the said obligation should be void, otherwise to stand and remain in its full force and virtue; as by the said writing obligatory, and the condition of the same writing obligatory brought here into court, more fully appears. *And the* *Defendant and intestate inter-married.*
 said *E.* further says, that afterwards, to wit, on the 1st day of *March* in the said year of our Lord 1686. at *H.* aforesaid in the county aforesaid, she the said *E.* married with the said *J. A.* *He died,*
 and before the day of exhibiting the bill of the said *H.* to wit, on the 1st day of *March* in the year of our Lord 1696. the said *J. A.* died intestate at *H.* aforesaid in the county aforesaid, and did not leave *and did not leave her 1000 l.*
 to the said *E.* the sum of 1000 l. nor any part thereof; and that at any time after the death of the said *J. A.* hitherto the sum of 1000 l. or any part thereof, has not been paid by the heirs or assigns of the said *J. A.* or any of them. *And the* *Administration granted to defendant.*
 said *E.* further says, that after the death of the said *J.* to wit, on the 13th day of *March* in the year of our Lord 1696. at *H.* aforesaid in the county aforesaid, administration of all and singular the goods and chattels, rights and credits, which were of the said *J. A.* at the time of his death, was in due form of law committed to the said *E.* by *T. B.* doctor of laws,

Pract. Reg.
37, 43.

Affets to 230 l.

Which she retains.

No other affets.

Bond in force.

commissary or principal official lawfully appointed of the reverend father in God *John* by divine permission lord bishop of *Chichester*, and for the whole archdeaconry of *L.* in the diocese of *C.* aforesaid, to whom the committing the said administration of right belonged. *After* the committing which said administration, divers goods and chattels which were of the said *J.* at the time of his death, to the value of 230 *l.* and not more, came to the hands of the said *E.* by virtue of the said administration, to wit, at *H.* aforesaid in the county aforesaid: *Which* said goods and chattels the said *E.* retains in her hands, in part of satisfaction of the said writing obligatory. *And* the said *E.* further says, that on the day of exhibiting the said bill of the said *H.* or before that time, or at any time afterwards, there did not come to the hands of the said *E.* any other or more goods and chattels which were of the said *J.* at the time of his death, besides the said goods and chattels to the value of the said 230 *l.* and not more, and which are not sufficient to satisfy to the said *E.* the said sum of 1000 *l.* mentioned in the condition of the said writing obligatory; *And* this she is ready to verify: Wherefore she prays judgment if the said *H.* ought to have or maintain his said action thereupon against her, &c. *With this*, that the said *E.* will verify that the said writing obligatory still remains in its full force and effect,

no

no ways annihilated or satisfied. *And that* Obligor and
 the said *J. A.* in the said writing obliga- *intestate the*
 tory mentioned, and *J. A.* in the said de- *same person.*
 claration and plea mentioned, are one and
 the same person, and not other nor dif-
 ferent. *Edw. Northey.*

And the said H. G. says, that he by any *Demurrer.*
 thing by the said *E.* above in pleading
 alledged, ought not to be barred from
 having his said action thereupon against
 her the said *E.* because he says that the
 said plea above pleaded by the said *E.* in
 manner and form aforesaid, and the matter
 therein contained, are not sufficient in law
 to bar the said *H.* from having his said
 action thereupon against the said *E.* To
 which said plea he the said *H.* has no
 need, and is not bound by the law of the
 land in any manner to answer; And this
 he is ready to verify: Wherefore, for de-
 fault of a sufficient answer in this behalf,
 the said *H.* prays judgment and his said
 debt, together with his damages by the
 occasion of detaining that debt to be ad-
 judged to him, &c.

And the said E. says, that the said plea *Joinder.*
 above pleaded by the said *E.* in manner
 and form aforesaid, and the matter therein
 contained, are good and sufficient in law
 to bar the said *H.* from having his said
 action thereupon against her the said *E.*
 which said plea, and the matter therein
 contained, the said *E.* is ready to verify
 and prove as the court, &c. And because
 the said *H.* does not answer to the said
 plea,

Continuance.

plea, nor has as yet in any manner denied the same, she the said *B.* as before prays, and that the said *H.* may be barred from having his said action thereupon against her, &c. But because the court of our

Continuance.

said lord the king now here is not advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *W.* until *Wednesday* next after fifteen days of *Easter*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here

Continuance.

is not yet advised thereof. At which day before our lord the king at *W.* the said parties came by their attornies aforesaid. But because the court of our said lord the king now here is not advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *W.* until *Friday* next after the morrow of the *Holy Trinity*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not advised thereof. At which day before our lord the king at *W.* the said parties came by their attornies aforesaid. But because the court of our said lord the king now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *W.* until *Monday* next after three weeks of *St. Michael*, to hear judgment of and upon

upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof. *At which day* before our lord the king at *W.* the said parties come by their attornies aforesaid.

But because the court of our said lord the *Continuance.*

king now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *W.* until *Monday* next after the octave of *St. Hilary*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof. *At which day* before our lord the king at *W.* the said parties come by their attornies aforesaid.

But because the court of our said lord the *Continuance.*

king now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *W.* until *Wednesday* next after fifteen days of *Easter*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof. *At which day* before our lord the king at *W.* the said parties come by their attornies aforesaid.

But because the court of our said lord the *Continuance.*

king now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *W.* until *Friday* next after the
morrow

morrow of the *Holy Trinity*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof. *At which day* before our lord the king at *W.* the said parties come by their attornies

Continuance. afore said. *But* because the court of our said lord the king now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *W.* until *Monday* next after three weeks of *St. Michael*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof. *At which day* before our lord the king at *W.* the said parties come by their attornies

Continuance. afore said. *But* because the court of our said lord the king now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before

Vide Preface to Lilly of Assize. our lord the king at *W.* until *Saturday* in fifteen days of *St. Hilary*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof. *At which day* before our lord the king at *W.* the said parties come by their attornies

Judgment for the defendant. afore said. *Whereupon* the court of our said lord the king now here having seen and fully understood all and singular the premisses, and having maturely deliberated thereupon, it appeared to the court of our said

said lord the king now here, that the said plea above pleaded by the said *E.* in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to bar the said *H.* from having his said action against the said *E.* Therefore it is considered, that the said *H. G.* take nothing by his said bill, but that he be in the mercy of the court for his false clamours, &c. and that the said *E.* go thereof without day, &c. And it is further considered, that the said *E. A.* recover against the said *H. G.* 14 l. 10 s. for her costs and charges laid out by her about her defence in this behalf, adjudged to the said *E.* by the court of our said lord the king now here, by her assent, according to the form of the statute in such case made and provided; and that the said *E. A.* have execution thereof, &c.

Adjudged in this case, that the debt was only suspended, and not extinguished.

Middlesex, to wit, *F. O.* widow, complains of *T. O.* Esq; and *H. H.* clerk, in the custody of the marshal, &c. of a plea that they render to her 84 l. of lawful money of *England*, which they owe her and unjustly detain; for that, to wit, that whereas by a certain indenture made at the parish of *St. Clement Danes* in the said county of *M.* on the 26th day of *February* in the year of our Lord 1682. between the said *F. O.* widow and relict of *G. O.* doctor of divinity, and late prebendary of the prebend of *L.* founded in the cathedral

Judgment
signed, 21 Feb.
1699.

Justices

Declaration is
debt for rent
upon a lease
of a rectory,
tithe, &c.

Profert.

thedral church of *L.* in the county of *S.* deceased, *M. O.* spinster, daughter of the said *G.* and *F. O. H. H.* of *R.* in the county of *W.* Esq; and *J. O.* of the *Middle Temple, London,* Esq; of the one part, and the said *T. O.* by the name of *T. O.* of *H.* in the said parish of *L.* Esq; and the said *H. H.* by the name of *H. H.* vicar of *L.* aforesaid, and prebendary of *L.* aforesaid, of the other part; One part of which said indenture, sealed with the seals of the said *T.* and *H.* the said *F.* brings here into court, the date whereof is on the same day and year aforesaid, the said *F. M. H.* and *J.* for and in consideration of the rents and covenants expressed in the said indenture on the part of the said *T.* and *H.* to be performed, by the said indenture demised and to farm let to the said *T. O.* and *H. H.* all that prebend, rectory or parsonage of *L.* aforesaid, with all the tithes of corn and hay growing and renewing, or which at any time during the term by the said indenture demised should grow, arise and renew upon the same, situate, lying and being in the said county of *S.* and the city and county of *L.* together with all rights, members, pensions, portions, profits, commodities and appurtenances, to the said prebend belonging or in any manner appertaining, together with all and all manner of houses, edifices and structures, yards, gardens, glebe lands, meadows, pastures, commons, chief-rents, reversions, services, tithes, tithings, fruits, oblations,

oblations, obventions, emoluments, and
 all rights, properties, advantages, and he-
 reditaments whatsoever, to the said pre-
 bend belonging or appertaining (Except
 the presentation and advowson of and to
 the vicarage of *L.* aforesaid, when and as
 often as the same should become vacant
 during the term in the said indenture
 granted); *To have* and to hold, perceive, Habendum.
 receive and enjoy all the said prebend,
 rectory and parsonage, glebe lands, houses,
 meadows, pastures, commons, tithes, tithings,
 fruits, oblations, obventions, and all other
 the premisses whatsoever by the said in-
 denture demised, with the appurtenances,
 (except before excepted) to the said *F. O.*
 and *H. H.* their executors, administrators
 and assigns, from the 30th day of *September*
 then last past before the date of the said
 indenture, for, during and unto the full
 end and term of twenty years and the half
 of a year and five months thence next en-
 suing, and fully to be complete and ended:
Tielling and paying therefore yearly and Reddendum.
 every year, during the first twenty years
 and the half of a year of the said term,
 to the said *F. O.* her executors, admini-
 strators and assigns, the sum or yearly
 rent of 42 *l.* of lawful money of *England*,
 at the feasts of the annunciation of the
 blessed virgin *Mary* and *St. Michael* the
 archangel, by even and equal portions;
 the first payment to begin at the feast-day
 of the annunciation of the blessed virgin
Mary next ensuing the date of the said
 inden-

*Defendants
entered.*

Rent arrear.

indenture: *And also yielding and paying* to the said *F. O.* her executors, administrators and assigns, for the last five months of the said term, the sum or rent of 21 *l.* of like lawful money of *England*, upon the last day of the said term, without any deduction, defalcation or abatement to be made of any rent or rents of 16 *l.* 13 *s.* and 4 *d.* payable yearly to the prebendary of *L.* aforesaid, or the pension or pensions of 30 *l.* payable yearly to the vicar coral stall of the said prebend, or the master of the works of the said cathedral church, or the yearly pension of 5 *l.* 6 *s.* and 8 *d.* to the vicarage of *St. Mary* in *L.* or the pension or yearly rent of 8 *s.* to the divinity-reader in the said cathedral-church for the time being, or for tenths due to his majesty or his successors for the said prebend, or for any other sums of money due or to be due for procurations, synodals, or any other charges ordinary or extraordinary, which should be due or become due and issuing therefrom, or for repairs, or any other taxes, charges, assessments or incumbrances whatsoever, as by the said indenture amongst other things more fully appears. *By virtue* of which said demise the said *T. O.* and *H. H.* afterwards, to wit, on the 10th day of *March* in the year of our Lord 1682. entered into the said demised premisses, with the appurtenances, and were and still are possessed thereof. *And* 84 *l.* of the said rent for the said premisses, for two years ended

ended at the feast of the annunciation of the blessed virgin *Mary* last past, were in arrear to the said *F.* and still are in arrear and unpaid. *Whereby* an action accrued *Actio accrevit.* to the said *F.* to demand and have of the *T. O.* and *H. H.* the said 84 *l.* Yet the said *T. O.* and *H.* altho' often requested, &c. have not, nor has either of them yet paid the said 84 *l.* to the said *F.* but have hitherto intirely refused, and still do refuse, to pay her the same, to the damage of the said *F.* of 100 *l.* And thereupon she brings suit, &c.

And the said *T. O.* and *H. H.* by ——— *Plea, that the*
 their attorney come and defend the force *plaintiff en-*
 and injury when, &c. and say, that the *tered into part*
 said *F. O.* the present plaintiff, ought not *of the demised*
 to have or maintain her said action there- *premisses before*
 upon against them, because they say, that *any rent was*
 after the said demise of the said premisses *due.*
 above specified in the said declaration, and
 before any rent became due and payable
 by the said demise to the said *F. O.* the
 present plaintiff, to wit, on the 20th day
 of *March* in the year of our Lord 1682.
 aforesaid, she the said *F. O.* the present
 plaintiff, with force and arms, &c. entered
 into a certain chamber called the great par-
 lour, parcel of the parsonage-house parcel
 of the said premisses, with the appurte-
 nances, to the said *T. O.* and *H. H.* in form
 aforesaid above demised, and not excepted,
 in and upon the possession of the said *T. O.*
 and *H. H.* thereof, to wit, at *L.* aforesaid
 in the county of *S.* aforesaid, and ejected,
 Vol. II. Y expelled

expelled and amoved the said *T. O.* and *H. H.* from their possession thereof, and held out the said *T. O.* and *H. H.* so therefrom ejected, expelled and amoved from their said possession thereof, from thence until and after the said feast of the annunciation of the blessed virgin *Mary* in the said declaration last mentioned; And this they are ready to verify: Wherefore they pray judgment, if the said *F. O.* the present plaintiff, ought to have or maintain her said action thereupon against them, &c.

Replication,
Non intravit.

And the said *F.* says, that she by any thing by the said *T.* and *H.* above in pleading alledged, ought not to be barred from having her said action thereupon against them, because she says, that she the said *F.* did not enter into the said chamber called the great parlour, parcel of the parsonage-house parcel of the said premisses, with the appurtenances, in form aforesaid, demised to the said *T. O.* and *H. H.* nor did she eject, expel and amove them from the same, in manner and form as the said *T.* and *H.* above in pleading have alledged; And this she prays may be inquired of by the country. And the said *T.* and *H.* do so likewise, &c. Therefore it is commanded to the sheriff of the county of *S.* that he cause to come before our lord the king and lady the queen at *W.* on — next after — twelve, &c. of the neighbourhood of *L.* aforesaid, by whom, &c. To recognize, &c. Because as well, &c. The same day is given to

Issue.
Venire awarded to the sheriff of the county where the premisses lie.

the parties aforesaid at the same place, &c.

Northamptonshire, to wit, R. R. the elder, *Declaration in*
late of the parish of D. in the county afore- *debt for rent*
said husbandman, was summoned to an- *on a lease at*
swer E. F. Gent. of a plea, that he render *will.*
to him 100 l. which he owes him and un-
justly detains: And whereupon the said E.
by W. L. his attorney says, that *whereas*
the said E. on the 29th day of *December*
in the year of our Lord 1698. at the parish
of D. aforesaid, demised and to farm let,
to the said R. one messuage and four yards
of land, lying and being in the parish of
D. aforesaid, and also one other yard of
land lying and being, &c. with the appurte-
nances, except out of the said demise to the
said E. F. all that little close of meadow
called the *Goads close*, &c. To hold the said
demised premisses, with the appurtenances,
(except before excepted) to the said R. *Habendum.*
from thenceforth as long as it should please
both the said parties: *Tielling* and paying *Roddendum.*
therefore to the said E. as long as the said
R. should hold and enjoy the said demised
premisses, (except before excepted) after
the rate of 50 l. of lawful money of *Eng-*
land by the year, to be paid at the two
most usual feasts, to wit, the feasts of the
annunciation of the blessed virgin *Mary*
and of St. *Michael* the archangel, by even
and equal portions. By virtue of which *Defendant en-*
said demise the said R. entered into the *tered.*
said demised premisses with the appurte-
nances (except before excepted) and was
possessed thereof, and continued possessed
thereof

thereof for one whole year thence next
Rent arrear. ensuing. And 50 *l.* of the said rent, parcel
of the said 100 *l.* for the said one year
ended at the said feast of *St. Michael* the
archangel last past, were in arrear and still
are in arrear and unpaid to the said *E.*
Actio accrevit. Whereby an action accrued to the said *E.*
to demand and have of the said *R.* the said
50 *l.* parcel of the said 100 *l.* Yet the
said *R.* altho' often requested, &c. has
not yet rendered to the said *E.* the said
50 *l.* parcel of the said 100 *l.* but has hi-
therto intirely refused, and still does re-
fuse to render the same to him. And also
Laid over whereas the said *E. F.* on the said 29th
again. day of *September* in the said year of our
Lord 1698. at *D.* aforesaid, demised and
to farm let to the said *R.* one other mes-
Habendum. suage, &c. with their appurtenances; To
have and to hold the said last mentioned
tenements with the appurtenances to the
said *R.* from thenceforth as long as it
should please both the said parties: *Yield-*
Reddendum. ing and paying therefore to the said *E.* as
long as the said *R.* should hold and enjoy
the said last mentioned demised premisses,
after the rate of 50 *l.* of lawful money of
England by the year, at the two most
usual feasts, to wit, the feasts of the an-
nunciation of the blessed virgin *Mary* and
of *St. Michael* the archangel, by even and
equal portions. By virtue of which said
demise the said *R.* afterwards, to wit, on
the 1st day of *October* in the said year of
our Lord 1698. last mentioned, entered
into

Defendant
enter'd.

into the said demised premisses with the appurtenances, and was possessed thereof, and continued possessed thereof for one whole year thence next ensuing. *And Rent arrear.*

50 *l.* of the said rent, residue of the said 100 *l.* for the said one year ended at the feast of St. *Michael* the archangel last past, were in arrear, and still are in arrear and unpaid to the said *E.* *Whereby* an action *Actio accrevit.* accrued to the said *E.* to demand and have of the said *R.* the said 50 *l.* residue of the said 100 *l.* *Tet* the said *R.* altho' often requested, &c. has not yet rendered to the said *E.* the said 50 *l.* residue of the said 100 *l.* but has hitherto intirely refused, and still does refuse to render the same to him, to the damage of the said *E.* of 50 *l.* And thereupon he brings suit, &c.

Leicestershire, to wit, Sir *N. C. Bart.* *Declaration in debt for rent.* complains of *W. F. Esq;* in the custody of the marshal of the *Marshalsea* of our lord the king and lady the queen, before the said king and queen, of a plea that he render to him 280 *l.* of lawful money of *England*, which he owes him and unjustly detains; *for that*, to wit, that *whereas* the said Sir *N.* on the 24th day of *March* in the fourth year of the reign of our late sovereign lord *James II.* late king of *England*, &c. at *F.* in the county aforesaid, had demised, granted, and to farm let, unto the said *W.* the several closes or parcels of land of the said Sir *N.* following, *to wit*, the west meadow at the end of the mill, the *Mill's close*, otherwise *Mile's close*,

close, the Hall-close, the Red-field, the Lilly-close, the Gate-close, the Warren, the Furzy-close, the Middle-close, and the Highway-close lying and being in *F.* aforesaid

Habendum. in the county aforesaid; *To have* and to hold the said several closes or parcels of land, with the appurtenances, to the said *W.* and his assigns, from the said 24th day of *March* in the fourth year aforesaid, unto the end and term of one whole year thence next ensuing and fully to be complete and ended: *Yielding* and paying therefore to the said Sir *N.* and his assigns the rent or sum of 280 *l.* of lawful money of *England.*

Defendant entered. By virtue of which said demise the said *W.* entered into the said tenements with the appurtenances, and was possessed thereof, and had, held and occupied the said tenements with the appurtenances. *And* the said 280 *l.* for the said year ended at the feast of the annunciation of the blessed virgin *Mary*, in the first year of the reign of our sovereign lord and lady *W.* and *M.* now king and queen of *England*, &c. were

Rent arrear. and still are in arrear and unpaid: *Whereby* an action accrued to the said Sir *N.* to demand and have of the said *W.* the said 280 *l.* *Tet* the said *W.* although often requested, &c. has not yet paid the said 280 *l.* to the said Sir *N.* but has hitherto intirely refused, and still does refuse to pay him the same, to the damage of the said Sir *N.* of 100 *l.* And thereupon he brings suit, &c.

And

And the said *W.* by — his attorney *Plea*, Nil ha-
comes and defends the force and injury *buit in tene-*
when, &c. and says that the said Sir *N.* *mentis.*
at the time of the said demise in the said *3 Lev. 193,*
declaration mentioned, had nothing in the *146.*
said tenements whereof he was able to *2 Vent. 251.*
make the said demise; And this the said *Pract. Reg.*
W. is ready to verify: Wherefore he prays *214.*
judgment if the said Sir *N.* ought to have *Townf. tabl.*
or maintain his said action thereupon *149.*
against him, &c.

And the said Sir *N.* says, that he by *Replication.*
any thing by the said *W.* above in plead-
ing alledged, ought not to be barred from
having his said action thereupon against
him; *Because* he says that heretofore, *Judgment in*
to wit, in the term of St. Michael in the *C.B. recovered*
32d year of the reign of our late sovereign *by plaintiff's*
lord Charles II. late king of England, &c. *testator against*
one Sir *J. C.* Knt. and Bart. deceased, in *defendant's an-*
his life-time, in the court of Common *cestor.*
bench at *W.* before Sir *F. N.* and his com-
panions, then justices of the said late king
of the bench aforesaid, at *W.* in the county
of *M.* by the consideration of the same
court recovered against *G. F.* Esq; by the
name of *G. F.* of *F.* in the county of *L.*
Esq; as well a certain debt of 2000 *l.* as
40 *s.* which then in the said court of
Common bench were adjudged to the said
Sir *J. C.* for his damages which he had as
well by occasion of the detaining that debt,
as for his costs and charges by him about
his suit in that behalf expended, whereof
the said *G.* was convicted, as by the re-
cord

cord and process thereupon remaining of record in the said court of Common bench at *W.* more plainly appears; which said judgment was had and obtained for a true and just debt due to the said Sir *J. C.* by the said *G. F.* and then and still no ways paid or satisfied; and the said judgment had and obtained in form afore-said, then remained in its full force and effect, no ways reversed, annulled or satisfied. *Elegit prayed and awarded.* And the said Sir *N.* further in fact says, that the said Sir *J. C.* in his life-time afterwards, *to wit*, on the 28th day of *November* in that same term, came into the said court of Common bench at *W.* afore-said by *J. D.* his attorney, and by the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *G.* except the oxen and beasts of his plough, and also a moiety of all his lands and tenements, to keep the said goods and chattels as his own proper goods and chattels, and also to hold the said moiety as his freehold to him and his assigns, according to the form of the said statute, until the said debt and damages should be thereof levied; And he prayed the writ of our late sovereign lord *Charles II.* late king of *England*, &c. to be directed to the sheriff of *L.* and it was granted to him, returnable in the same court of Common bench at *W.* afore-said on the octave of *St. Hilary*, &c. *Vic. non misit breve.* At which day the said Sir *J. C.* by his said attorney came into the same court, and the

the sheriff did nothing thereupon, and did not send the said writ. *Therefore*, as be-^{Alias award-}fore, another writ was made out to him^{ed.} thereupon in form aforesaid, returnable in the same court on the morrow of the *Holy Trinity*, &c. *At which day* the said *The return;* Sir *J. C.* by his said attorney came into the said court, and the sheriff, *to wit*, *J. D. Esq;* then returned there a certain inquisition taken before him at *B.* in the said county of *L.* on the 30th day of *May* then last past, by the oath of twelve, &c. by whom it was found that the said *G.* on the day of taking the said inquisition was seised in his demesne as of fee, of and in one close of pasture with the appurtenances in *F.* in the said county of *L.* called *Mile's close*, containing by estimation eight acres or thereabouts, then or late in the tenure or occupation of the said *G. F.* or his assigns, of the clear yearly value in all issues above reprises of 60 s. and of and in one other close of pasture with the appurtenances in *F.* aforesaid in the said county of *L.* called *Hall-close*, containing by estimation eighteen acres or thereabouts, then or late in the tenure or occupation of the said *G. F.* or his assigns, of the clear yearly value in all issues above reprises of 10 l. and of and in one other close of pasture with the appurtenances in *F.* aforesaid in the county aforesaid, called *Red-field*, containing by estimation 140 acres or thereabouts, then or late in the possession of the said *G. F.* or his assigns, of the clear

clear yearly value in all issues above reprises of 40 l. and of and in one other close of pasture with the appurtenances in *F.* aforesaid in the county aforesaid called *Kilby-close*, containing by estimation sixty-eight acres of land or thereabouts, then or late in the tenure or occupation of the said *G. F.* or his assigns, of the clear yearly value in all issues above reprises of 30 l. [*All the several parcels recited in the same manner*] and that the said close called *Mill's close* in *F.* aforesaid in the county aforesaid, the said close called *Hall's close*, the said close called *Redfield*, the said close called *Kilby*, the said close called the *Gate-close*, the said close called the *Warren*, the said close called the *Furzy-close*, the said close called the *Middle-close*, the said close called the *Highbway-close*, the said close called the *West-meadow* at the end of the mill, being all in the occupation of the said *G. F.* or his assigns, and lying and being in *F.* aforesaid in the said county of *L.* are one just and equal moiety of the said messuages, lands and tenements. *Which* said moiety the said sheriff on the said day of taking the said inquisition, by virtue of the said writ so as aforesaid directed to him, caused to be delivered to the said Sir *J. C. Bart.* to hold to him and his assigns as his freehold, until the said debt and damages should be fully levied, as by the said writ he was commanded. *And* the said Sir *N.* further says, that the several closes and parcels of land

*A moiety of
the lands deli-
vered.*

*Which are the
lands men-
tioned in the
declaration.*

land last mentioned, to wit, the *Mill's close*, the *Hall-close*, the *Red-field*, *Kilby-close*, the *Gate-close*, the *Warren*, the *Purzy-close*, *Middle-close*, *Highbway-close*, the west meadow at the end of the mill, are the same closes in the said declaration above mentioned to be demised to the said *W.*

Into which said closes with the appurtenances the said Sir *J. C.* entered in his life-time by virtue of the said delivery, and was seised thereof as of his freehold until, &c. *Plaintiff's father entered.*

And being so thereof seised, the said Sir *J. C.* afterwards, to wit, on the 1st day of *December* in the year of our Lord 1686, at *L.* in the county of *L.* *Made his will, and plaintiff executor, and died.*

aforsaid, made his testament and last will in writing, and by the same constituted and appointed the said Sir *N.* executor of his said testament, and afterwards died there so seised as aforsaid.

After whose death the said Sir *N.* proved the said testament of the said Sir *J.* in due form of law, and took upon him the burthen of the execution of the same: And the said Sir *N.* entered into the said closes last mentioned with the appurtenances, and was seised thereof as of his freehold until, &c. *Plaintiff proved the will and entered.*

And that at the time of the demise in the said declaration above-mentioned, or at any time afterwards, he had not levied the said debt and damages, or any part thereof.

And so the said Sir *N.* says, that he at the time of the demise in the said declaration above mentioned had a good and sufficient estate in the said tenements *Debt and damages not levied.*

with

And so plaintiff had a good estate to demise.

with the appurtenances, whereof he could make the said demise of the said tenements with the appurtenances to the said *W.* And this he is ready to verify: Wherefore he prays judgment and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c.

*Rejoinder.
A prior judgment in Scacc.
recovered by
two strangers
against defend-
ant's an-
cestor.*

And the said *W.* says, that long before the recovery of the said judgment by the said Sir *J. C.* against the said *G. F.* mentioned in the replication of the said Sir *N.* to wit, in the term of the *Holy Trinity* in the 26th year of the reign of (our late sovereign lord *Charles II.* late king of *England*, &c. one *W. B.* Esq; and *W. R.* Esq; then debtors of our said late sovereign lord *Charles II.* then king of *England*, &c. came into the court of Exchequer of our then said sovereign lord *Charles II.* at *W.* before the barons of the said Exchequer, on the 8th day of *July* in the same term, by *T. H.* then their attorney, and then complained by bill against the said *G. F.* by the name of *G. F.* Esq; then present in court on the same day, of the plea that he should render to them 6000 *l.* which he owed them and unjustly detained, for that, to wit, that whereas the said *G. F.* on the last day of *May* in the 26th year of the reign of our said sovereign lord the late king, at *L.* to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, had borrowed of the said *W. B.* and *W. R.* the said 6000 *l.* to be paid

paid to the said *W. B.* and *W. R.* when he should be thereunto afterwards required: Yet the said *G. F.* altho' often requested, had not then rendered the said 6000 *l.* to the said *W. B.* and *W. R.* but had intirely refused, and then did refuse to render the same to them or to either of them: Wherefore the said *W. B.* and *W. R.* then said that they were injured, and had damage to the value of 100 *l.* Whereby the said *W. B.* and *W. R.* were the less able to satisfy our said sovereign lord the then king the debts which they then owed to our said then lord the king, at his said Exchequer, as they said; And thereupon they brought suit, &c. And they then found pledges of prosecuting, *J. D.* and *R. R.* And the said *G. F.* by *By Cognovit*
R. O. then his attorney, came and de- actionem.
 fended the force and injury when, &c. and then prayed oyer of the said bill, and it was read to him, &c. Which being read and heard, the said *G.* then said that he could not deny the said action of the said *W. B.* and *W. R.* nor but that he owed to the said *W. B.* and *W. R.* the said 6000 *l.* in manner and form as the said *W. B.* and *W. R.* by their said declaration then declared against him. Therefore it was then considered by the barons there, that the said *W. B.* and *W. R.* should recover against the said *G. F.* their said debt, and also their damages by occasion of the detaining that debt to 30 *s.* adjudged by the said court to the said *W. B.* and *W. R.*
 by

*Elegit prayed
and awarded.*

by their assent; And that the said *G. F.* should be in mercy, &c. As by the record and process thereupon remaining in the said court of exchequer, of the said late king at *Westminster* more fully appears; Which said judgment was had and obtained in form aforesaid, for a true and just debt then due, by the said *G. F.* to the said *W. B.* and *W. R.* and to this time no ways paid or satisfied; And the said judgment still remains in its full force and effect, no ways reversed, annulled or satisfied. And the said *W. B.* and *W. R.* said that they, the said *W. B.* and *W. R.* afterwards came into the court of exchequer of the said late king, and by the statute in such case prescribed, chose to be delivered to them, all the goods and chattels of the said *G.* except the oxen and beasts of his plough, and also a moiety of all the lands and tenements of the said *G.* to keep the said goods and chattels as their own proper goods and chattels, and also to hold the said moiety as their freehold, to them and their assigns, according to the form of the said statute, until they should thereof levy the said debt and damages. Whereupon, afterwards, to wit, on the 29th day of *November* in the term of *St. Michael* in the 27th year of the reign of our said late sovereign lord *Charles* the second, late king of *England*, by the writ of the said late king, of *Elegit*, prosecuted for and upon the said judgment, directed to the said then sheriff of the county of *Leicester*, it was

commanded to the said then sheriff of the county of *Leicester*, that without delay, he cause to be delivered to the said *W. B.* and *W.* by a reasonable price and extent, all the goods and chattels of the said *G.* except the oxen and beasts of his plough, and also a moiety of all the lands and tenements in his bailiwick, whereof the said *G.* was seised on the morrow of the *Holy Trinity* in the 26th year of the reign of the said late king of *England*, &c. on which day the said judgment was given, or at any time afterwards, to keep the said goods and chattels as their own proper goods and chattels; And also to hold the said moiety as their freehold to them and their assigns according to the form of the said statute, until they should thereof levy the said debt and damages: And the said sheriff was commanded to make appear to the barons of the said exchequer at *Westminster*, on the octave of the purification of the blessed virgin *Mary* then next ensuing, under his seal and the seals of them by whose oath he should make the said extent and appraisement in what manner the said writ should be executed, together with the names of them, by whose oath he should make that extent and appraisement and the said writ. *At which day*, the said *W. B.* and *W. R.* came into the said court in their proper persons, and the sheriff, to wit, *W. C. Esq;* then sheriff of the said county of *Leicester*, returned, that the said *G. F.* had no goods or chattels, in his bailiwick,

Return.

Nulla bona.

An inquisition.

liwic, whereof he could cause to be made the said debt or any part thereof: And he further returned upon the said writ, a certain inquisition, taken before him at the borough of *Leicester* in the said county of *Leicester*, on the 3d day of *February* in the 28th year of the reign of our said late sovereign lord king *Charles II.* by the oath of *E. B. T. H. &c.* [naming all the jurors] good and lawful men of his county, who being sworn and charged upon their said oaths, said, that the said *G. F. Esq;* in the said writ named, at the time of giving the said judgment specified in the said writ, *to wit,* on the morrow of the *Holy Trinity* in the 26th year of the reign of the said late king *Charles II.* the time of giving the said judgment, was seised, and then stood seised in his demesne as of fee, of and in one capital mesuage, with the appurtenances, situate, lying and being in *F.* in the county aforesaid, then in the tenure or occupation of the said *J. F.* or his assigns, of the clear yearly value in all issues above reprises of ten shillings, and of and in one close of pasture, with the appurtenances in *F.* aforesaid in the county aforesaid, called the *Barn-yard*, containing by estimation two acres in the tenure or occupation of the said *G. F.* or his assigns, of the clear yearly value in all issues above reprises of ten shillings, and of and in one close of pasture with the appurtenances in *F.* aforesaid in the county aforesaid, called *Mill's Close*, containing by estimation

estimation, &c. [*writing all the particulars*] *Moiety of the*
Which said capital messuage, with the appurtenances, the said close called *Barn-* *lands deli-*
yard, the said close called *Mill's Close*, the said close called *Hall's Close*, the said close called *Redfield*, the said close called *Kilby-Close*, the said close called *Gate-Close*, the said close called the *Warren*, the said close called *Furzy Close* [*with some others recited*] with all and singular their appurtenances, are one equal moiety of all and singular the said demised messuages, lands and tenements, which said moiety, he the said sheriff, on the day of taking the said inquisition by virtue of the said writ, caused to be delivered to the said *W. B.* and *W. R.* in the said writ mentioned, to hold to them and their assigns, as their freehold, until the debt and damages in the said writ named, should be thereof fully levied, as by the said writ he was commanded: And the said *W.* further says, that the said sheriff further returned, that the said jurors upon their said oath further said, that the said *G. F.* in the said writ mentioned, had not, nor had on the day of taking the said inquisition and giving the said judgment, or at any time afterwards, any other or more messuages, lands or tenements, or any goods or chattels in his bailiwick, to the knowledge of the said jurors, or by any evidence shewn to them, as by the said writ, return and inquisition aforesaid, assiled of record in the said court of exchequer of our said late
 Vol. II. Z lord

The lands delivered and the lands in the declaration the same.

lord king *Charles II.* more fully appears. And the said *W. F.* further says, that the several closes and parcels of land, to wit, the *Mike's Close*, the *Hall's Close*, the *Red-field*, the *Kilby-Close*, the *Gate-Close*, the *Warren*, the *Furzy Close*, the *Highway-Close*, the *West Meadow* at the bridge, the *West Meadow* at the end of the *Middle Close*, parcel of the closes and tenements in the said inquisition mentioned, and by the said sheriff of the said county of *Leicester*, delivered by the said inquisition to the said *W. B.* and *W. R.* to hold to them and their assigns, until they should fully levy the said debt and damages due to them, and the closes in the said declaration mentioned to be demised, by the said *Sir N.* to the said *W. F.* are one and the same closes, and not other nor different. Into which said closes, with the appurtenances, the said *W. B.* and *W. R.* by virtue of the said delivery, before the demise in the said declaration mentioned to have been made by the said *Sir N.* to the said *W. F.* entered, and were seised thereof, as of their freehold until, &c. And being so seised thereof, the said *W. R.* afterwards, to wit, on the 1st day of *February* in the year of our Lord 1697, at *F.* aforesaid in the said county of *Leicester* died, and the said *W. B.* survived him, and held himself in by right of survivorship. And the said *W. F.* further says, that neither the said *W. B.* and *W. R.* or either of them, in the life-time of the said *W.* had levied, nor had either of them levied

The Plaintiffs in the action entered before the Plaintiff's demise.

The one dies, the survivor holds jure accrescendi.

Their debt not levied.

levied the said debt and damages, neither has the said *W. B.* since the death of the said *W. R.* yet levied the said debt and damages, but great part thereof, to wit, the sum of 5000 *l.* and more still remains due to the said *W. B.* no ways levied or satisfied. And so the said *W. F.* says, that the said Sir *N.* at the time of the said demise; in the said declaration above mentioned, had not a good and sufficient estate in the said tenements, with the appurtenances, out of which he could make the said demise of the said tenements, with the appurtenances, to the said *W. F.* And this the said *W. F.* is ready to verify: Wherefore the said *W. F.* (as before) prays judgment if the said Sir *N.* ought to have or maintain his said action against him.

And so plaintiff had no title to demise.

And the said Sir *N.* says, that the said judgment in form aforesaid had and obtained by the said *W. B.* and *W. R.* against the said *G. F.* was had and obtained by fraud and covin then before had between the said *W. B.* and *W. R.* the said *G. F.* at *P.* aforesaid in the said county of *Leicester*, to defraud the said Sir *N.* and other creditors of the said *G.* of their true and just debts; And this he is ready to verify: Wherefore (as before) he prays judgment and his said debt, together with his damages, by occasion of the detaining that debt, to be adjudged to him, &c.

Surrejoinder, That the judgment was obtained per fraudem.

And the said *W.* says, that the said judgment had and obtained in form aforesaid

Rebuttor,

*The judgment
was for a just
debt.*

Traverse.

said by the said *W. B.* and *W. R.* against the said *G. F.* was had and obtained for a true and just debt, due to the said *W. B.* and *W. F.* by the said *G. F.* *Without* this, that the said judgment had and obtained in form aforesaid, by the said *W. B.* and *W. R.* against the said *G. F.* was had and obtained by fraud and covin before had between the said *W. B.* and *W. R.* and the said *G. F.* to defraud the said Sir *N.* and other creditors of the said *G.* of their true and just debts, in manner and form as the said Sir *N.* has above pleaded in surrejoining; And this he is ready to verify: Wherefore (as before) he prays judgment, and that the said Sir *N.* may be barred from having his said action there-upon against him the said *W.* &c.

*Surrebutter
maintains the
Surrejoinder.*

And the said Sir *N.* (as before) says, that the said judgment, in form aforesaid had and obtained by the said *W. B.* and *W. R.* against the said *G. F.* was had and obtained by fraud and covin before had between the said *W. B.* and *W. R.* and the said *G. F.* to defraud the said Sir *N.* and the other creditors of the said *G. F.* of their true and just debts, in manner and form as the said Sir *N.* has above in surrejoining pleaded, to wit, at *F.* aforesaid in the county of *Leicester* aforesaid; And this he prays may be inquired of by the country: And the said *W. F.* does so likewise, &c. Therefore let a jury there-upon come before our lord the king, and lady the queen, at *Westminster*, on —

*Issue.
Venire a-
warded.*

next

next after ——— And who neither, &c.
To recognize, &c. Because as well, &c.
The same day is given to the parties a-
foresaid at the same place, &c.

Middlesex, to wit, *M. W.* late of *London*, Declaration
widow, executrix of the testament and in debt against
last will of *E. W.* of the parish of *St. Giles* an executrix
Cripplegate in the county of *M.* grafter, for rent incur-
was summoned to answer *H. T.* of a plea, ed in her own
time.

that she render to him 36 l. 5 s. which
she owes him, and unjustly detains, &c.
And whereupon the said *H.* by *W. M.* his
attorney says, *that whereas* by certain articles, Articles.

articles of agreement, made at the said pa-
rish of *St. Giles Cripplegate*, on the 23d
day of *October* in the year of our Lord
1689, between the said *H. T.* by the name
of *H. T.* citizen and blacksmith of *London*,
of the one part, and the said *E.* by the
name of *E. W.* of the parish of *St. Giles*
Cripplegate in the county of *M.* grafter,
of the other part, the counterpart of which Profers.

sealed with the seal of the said *E.* the said
H. brings here into court, the date where-
of is on the same day and year, the said *H.* Demise.

demised, granted, set and to farm let,
to the said *E.* all those six acres of meadow,
more or less, lying and being in the com-
mon field called the *Pesthouse-Field*, and
in a field near a certain house called the
Halfway-House, and in a field called the
Conduit-Field, in the several parishes of
St. Giles Cripplegate aforesaid, and *St. Leo-
nard Shoreditch*, in the said county of *M.*
To hold and occupy to the said *E.* his ex-Habendum.

Reddendum.

Testator entered.

Makes his will, and defendant executrix, and dies.

Defendant enters.

ecutors, administrators and assigns, from the feast of the nativity of our Blessed Lord and Saviour then next ensuing, for the term of 7 years thence next ensuing, and fully to be complete and ended; *Yielding* and paying therefore yearly the sum of 3 *l.* and 10 *s.* for every acre of the said land, being in the whole 21 *l.* by even and equal portions quarterly at the feast of the annunciation of the blessed virgin *Mary*, the feast of the nativity of *St. John* the baptist, the feast of *St. Michael* the archangel, and the feast of the nativity of our Lord, as by the said articles amongst other things more fully appears; By virtue of which demise the said *E.* entered into the tenements and premisses above demised, with the appurtenances, and was possessed thereof. And being so thereof possessed, the said *E.* afterwards, to wit, on the 1st day of *March* in the 6th year of the reign of our sovereign lord *William*, now king, and sovereign lady *Mary*, late queen of *England*, &c. at the said parish of *St. Giles Cripplegate*, made his testament and last will in writing, and constituted and appointed the said *M.* executrix of the said testament, and afterwards died there, so thereof possessed, after whose death, the said *M.* there took upon her the burthen of the execution of the said testament; And afterwards, to wit, on the same day and year, entered into the said tenements and premisses above demised and granted, and was possessed thereof by reason of the execution

execution of the said testament; And 36*l*. 5*s*. of the said rent for one year and three quarters of a year at the feast of St *Michael* the archangel in the 7th year of the reign of our sovereign lord the present king, were in arrear to the said *H.* and are still unpaid; *Whereby* an action accrued to the said *H.* to demand and have of the said *M.* the said 36*l*. 5*s*. *Ter* the said *M.* although often requested, &c. has not yet paid the said 36*l*. to the said *H.* but has hitherto refused, and still does refuse to pay him the same. Wherefore he says he is injured, and has damage to the value of 40*l*. And thereupon he brings suit, &c.

Actio accrevit.

And the said *M.* by *F. R.* her attorney, *Plea*, comes and defends the force and injury when, &c. And says, that the said *H.* ought not to have or maintain his said action thereupon, against her; *Because* she says, that after the making the said articles in the said declaration mentioned, the said *E. W.* in his life-time, by his certain writing sealed with his seal, made at the said parish of *St. Giles Cripplegate* in the county aforesaid, on the 21st day of *January* in the year of our Lord 1692. *Which* the said *M.* brings here into court, for and in consideration of the sum of 18*l*. 5*s*. 6*d*. to the said *E.* in hand paid by one *R. H.* bargained, sold and assigned to the said *R. H.* All his estate, right, title and property, claim and demand whatsoever, of, in, to or out of the said demised premisses, by force or virtue of the

Testator ass. signed the term.

Proferat.

Leffee entered. said written lease or instrument, or other, wife howsoever; By virtue whereof he the said R. afterwards, to wit, on the 1st day of February in the year of our Lord 1692. entered into the said demised premises, so as aforesaid, bargained, sold and assigned to him with the appurtenances, and was, and still is possessed thereof. And the said M. further says, that he the said E. W. in his life-time, afterwards, to wit, on the 10th day of February in the year last aforesaid, at the parish aforesaid in the county aforesaid, gave notice to the said H. of the said assignment so made to the said H. as aforesaid: And this the said M. is ready to verify. Wherefore she prays judgment, if the said H. ought to have or maintain his said action thereupon against her, &c.

Testator gave notice to Plaintiff.

The plaintiff did not dare to go on because the declaration should have been in the Detinet only, and not in the Debet and Detinet. Sed Q.

Declaration in debt by baron and feme executrix, for rent due after testator's death.

Middlesex, to wit, Sir T. A. P. Bart. and E. his wife, executrix of the testament and last will of Sir J. D. Knt. of the Bath, her late father deceased, complains of Sir J. J. Knt. otherwise lately called J. J. of Scotland-yard in the county of M. Esq; in the custody of the marshal, &c. of a plea that he render to them 30 l. of lawful money of England, which he unjustly detains from them for that, to wit, that Whereas the said Sir J. D. in his life-time, to wit, on the twelfth day of November in the 19th year of the reign of our sovereign

The indenture of lease.

reign

reign lord *Charles II.* now king of *England, &c.* at the parish of *St. Martin in the fields* in the said county of *M.* by his certain indenture made between the said Sir *J. D.* by the name of the honourable Sir *J. D. Knt. of the Bath,* of the one part, and the said Sir *J. J.* by the name of *J. J. of Scotland-yard* in the county of *M.* of the other part, the coun- *Profers,*
terpart of which, sealed with the seal of the said Sir *J. J.* the said Sir *T. and E.* bring here into court, the date whereof is on the same day and year aforesaid, had *Demise,*
demised, granted, and to farm let, to the said Sir *J. J.* All those chambers, cellars, closets, kitchen, coal-house, coach-house, yard and piece of land, and other rooms of the said Sir *J. D.* then in the occupation of the said Sir *J. J.* and situate and being in *Scotland-yard* aforesaid, near *Whitehall,* in the said parish of *St. Martin in the fields* in the county of *M.* aforesaid, together with all ways, passages, lights, easements and appurtenances to the same premisses belonging; *To Have* and to hold the *Habendum.*
said premisses, with the appurtenances, to the said Sir *J. J.* his executors, administrators and assigns, from the feast-day of *St. Michael* the archangel then last past, unto the full end and term of 30 years thence next ensuing and fully to be complete and ended; *Tielling* and paying therefore, *Reddendum.*
during the first two years and three quarters of a year, of the said term of 30 years, to the said Sir *J. D.* his executors, administrators

nistrators and assigns, the yearly rent of one pepper-corn, at the feast of St. Michael the archangel, if the same should be lawfully demanded; And yielding and paying also to the said Sir J. D. his executors, administrators and assigns, during the residue of the said term of 30 years, the yearly rent of 60*l.* of lawful money of England, at the feast of St. Michael the archangel, the nativity of our Lord God, the annunciation of the blessed virgin Mary, and the nativity of St. John the baptist; As by the said indenture amongst other things more fully appears; By virtue of which said demise the said Sir J. J. afterwards, to wit, on the 1st day of January in the 19th year aforesaid, entered into the premises aforesaid with the appurtenances, and was and still is possessed thereof. And the said Sir J. D. afterwards, to wit, on the 13th day of March in the year of our Lord 1668, in the said parish of St. Martin in the fields in the county of M. aforesaid, made his testament and last will in writing, and by the same constituted and appointed the said E. sole executrix thereof; And afterwards, to wit, on the 1st day of May in the year of our Lord 1670, at the said parish of St. Martin in the fields in the county of M. aforesaid died; after the death of which said J. D. she the said E. took upon her the execution of that testament, and afterwards, to wit, on the 9th day of May in the year of our Lord last aforesaid, at the said parish

Defendant entered.

Testator made his will, and plaintiff E. executrix.

and died.

She proves the will.

parish of *St. Martin in the fields* in the county of *M.* aforesaid, in due form of law proved the said will; And afterwards, *And marries the plaintiff Sir T.* to wit, on the 1st day of *May* in the 29th year of the reign of our said sovereign lord the present king, at the said parish of *St. Martin in the fields* in the county of *M.* aforesaid, married the said Sir *T.* *And Rent arrear.*

30*l.* for rent of the said premisses, for half a year ended at the feast of the nativity of *St. John* the baptist last past, were in arrear to the said Sir *T.* and *E.* after the death of the said Sir *J. D.* and after the marriage between the said Sir *T.* and *E.* celebrated, and still are in arrear and unpaid:

Whereby an action accrued to the said Sir *T.* and *E.* to demand and have of the said Sir *J. J.* the said 30*l.* *Tet* the said Sir *J. J.* although often requested, *Ec.* has not yet paid the said 30*l.* to the said Sir *T.* and *E.* or to either of them, but to pay the same to them or to either of them has intirely refused, and still does refuse, and unjustly retains, to the damage of the said Sir *T.* and *E.* of 60*l.* And thereupon they bring suit, *Ec.* *And* the said Sir *T.* *A. P.* *Profert of the letters testamentary.*

Whereby an action accrued to the said Sir *T.* and *E.* to demand and have of the said Sir *J. J.* the said 30*l.* *Tet* the said Sir *J. J.* although often requested, *Ec.* has not yet paid the said 30*l.* to the said Sir *T.* and *E.* or to either of them, but to pay the same to them or to either of them has intirely refused, and still does refuse, and unjustly retains, to the damage of the said Sir *T.* and *E.* of 60*l.* And thereupon they bring suit, *Ec.* *And* the said Sir *T.* *A. P.* *Profert of the letters testamentary.* it sufficiently appears to the court here, that the said *E.* is executrix of the said testament, *Ec.*

Warwickshire, to wit, *W. B.* late of *H-* *Declaration in* *mington* in the county of *W.* aforesaid, yeo- *debt for rent on* man, was summoned to answer *R. H.* of *a lease parol.* a plea, that he render to her 74*l.* of good and

and lawful money of *Great Britain*, which he owes her, and unjustly detains from, &c. And whereupon the said R. by R. S. her attorney says, that whereas she, on the 2d day of *December* in the 3d year of the reign of our lord the now king, at *Stratford* in the said county, did demise to the said W. one messuage and 50 acres of land, meadow and pasture, with the appurtenances, in *Ilmington* in the county aforesaid; To Have and to hold to him and his assigns, from the first day of *November* then last past to the full end and term of one whole year from thence next ensuing and fully to be complete and ended, and so from year to year, as long as both parties should please; Yielding and paying therefore yearly, and every year, to the said R. the rent of 25 *l.* on the 1st day of *May*, and the first day of *November*, by even and equal portions; the first payment to be made on the 1st day of *May* then next ensuing; By virtue of which said demise the said W. entered upon the said tenements, with the appurtenances, and enjoyed the same: And the sum of 74 *l.* rent for three years, on the 1st day of *November* in the year of our Lord 1733, was due in arrear to the said R. and still is unpaid; Whereby an action accrued to the said R. to demand and have of the said W. the said 74 *l.* rent; Yet the said W. though often requested, hath not rendered the said 74 *l.* to the said R. but hath refused, and still doth refuse, to render the

the same to her, to the damage of the said R. of 10*l*. And thereupon she brings this suit, &c.

And the said A. H. says, that he by any *Replication*, thing by the said J. above in pleading *that the defendant being a* alledged ought not to be barred from having his said action thereupon against the *servant of the warden of the Fleet, permitted a prisoner to escape.* said J. because he says, that the said T. F. in his life-time, to wit, at the time of making the said writing obligatory, and also on the first day of *April* in the 7th year of the reign of *William III.* late king of *England*, &c. and before, was warden of the prison of the said late king, of the *Fleet*, to wit, at *London* aforesaid, in the parish of *St. Mary Le Bow* in the ward of *Cheap*. And the said J. T. for the whole time aforesaid, to wit, on and before the said 1st day of *April*, and also at the time of making the said writing obligatory, was a servant under the said T. F. having and exercising the care and custody of the said prison and the prisoners thereto committed, to wit, at the parish and ward aforesaid; And that the said T. was so warden of the said prison, and the said J. as before said, had and exercised the care and custody of the said prison and the prisoners thereto committed; And lately before the making the said writing obligatory, to wit, on the same 1st day of *April* beforementioned, at the parish and ward aforesaid, one F. H. Gent. was a prisoner in the said prison of the *Fleet* in execution, at the suit of one Sir A. H. Knt. for a certain debt

*Bill filed a-
gainst the
warden for
the escape, set-
ting forth*

*The judgment
obtained a-
gainst the pri-
soner in B. R.*

debt of 1000 l. 46 s. for damages, and then and there without the license, and against the proper will of the said *T. F.* and with the license and permission of the said *J. T.* escaped out of the said prison; the said Sir *A.* being then no ways satisfied for the debt and damages aforesaid; Whereof the said *J.* at and before the time of making the said writing, had notice, to wit, at *London* aforesaid in the parish and ward aforesaid. And the said *T.* being so as aforesaid warden of the said prison, the said Sir *A. H. Knt.* before the making the said writing obligatory, to wit, on the 12th day of *April* in the term of *Easter* in the 7th year of the reign of the said king, came into the court of the said late king, before Sir *G. T. Knt.* and his companions, justices of the said king of the bench at *Westminster*, by *H. C.* then his attorney, and then exhibited to the said justices his certain bill against the said *T. F.* warden of the prison of the said late king, of the *Fleet*, then present in the same court in his proper person, of a plea of debt; by which said bill the said Sir *A.* then complained that the said *T.* unjustly detained, and did not render to the said Sir *A.* 1002 l. 6 s. which he owed him, for that, to wit, that *Whereas* the said Sir *A.* heretofore, to wit, in the term of *Easter* in the 5th year of the reign of the said late king and the lady *Mary* the late queen, in the court of the said late king and queen, before the said late king and queen, the said

court being then at *Westminster* in the county of *M.* by bill without the writ of the said late king and queen, and by the judgment of the same court, had recovered against the said *F. H. Gent.* as well a certain debt of 1000 *l.* as 46 *s.* which in the same court were adjudged to the said Sir *A.* for his damages which he had sustained as well by occasion of the detaining that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *R.* was convicted. *And* ^{His being committed in execution there;} the said *F. H.* afterwards, to wit, on *Monday* next after the morrow of the ascension of our Lord in the 6th year of the reign of the said late king and queen, then being present in his proper person in the said court of the said late king and queen, before the said late king and queen at *Westminster* in the county of *M.* aforesaid, at the prayer of the said Sir *A.* was committed by the said court of the said late king and queen, before the said late king and queen there, to the custody of the marshal of the *Marshalsea* of the said late king and queen, before the said late king and queen, in execution for the debt and damages aforesaid, at the suit of the said Sir *A.* there to remain until, &c. As by the record and proceedings as well of the said judgment as of the said commitment in execution, remaining in the said court of the said late king, before the said late king at *Westminster* aforesaid, more fully appeared. By virtue of which said commitment the said marshal

removed by
Habeas Cor-
pus ;

committed to
the custody of
the warden.

marshal of the said *Marshalsea* then and there received the said *F.* into his custody, and had and detained him in execution for the said debt and damages. And the said *F.* being so in the custody of the marshal of the said *Marshalsea*, in Execution for the said debt and damages in form aforesaid, afterwards, *to wit*, on the 24th day of *May* in the 6th year aforesaid, the said *F.* came in his proper person, being brought under the custody of the said marshal of the *Marshalsea* aforesaid, by virtue of, the writ of the said late king and queen of *Habeas Corpus* of the said *Francis*, directed to the said marshal, issuing out of the court of the said late king and queen of the Bench at *Westminster* aforesaid, before Sir *J. P. Knt.* then one of the justices of the said late king and queen of the bench, at his chamber situated in *Serjeants-inn* in *Chancery-lane*, *London* ; And the said marshal, *to wit*, *W. B. Esq;* then and there returned to the said justice (amongst other things) that the said *F. H.* was charged in execution at the suit of the said Sir *A.* for the said 1000 *l.* of debt, and 46 *s.* for damages so as aforesaid recovered, the body of which said *F.* he then and there had ready, according to the tenor of the said writ: Whereupon the said *F. H.* then and there was committed by the said justice to the prison of the said king and queen of the *Fleet* in execution for the said debt and damages, (amongst other things) there to remain until, &c. which said commitment

the said justice afterwards, *to wit*, on the 8th day of *June* in the term of the holy *Trinity* in the 6th year aforesaid, by his own proper hands delivered unto the said court of the Bench aforesaid, to be inrolled of record, and the same commitment was inrolled of record in the same court, as by the record of the said writ and the return thereof, and the commitment in execution last mentioned, remaining in the same court of the Bench aforesaid, *to wit*, at *Westminster* aforesaid, then more fully and plainly appeared; by virtue of which said commitment the said *T. F.* being warden of the said prison of the *Fleet*, on the said 24th day of *May* in the 6th year aforesaid, then and there, *to wit*, before the said justice at his chambers aforesaid situate in *Serjeants-Inn* aforesaid, took the said *F. H.* into his custody, and immediately led and put the said *F. H.* unto and in the said prison of the *Fleet*, then being at *London*, *to wit*, in the parish of *St. Bridget*, otherwise *St. Brides*, in the ward of *Farringdon without*, and then and there had and detained the said *F.* in the said prison in execution for the debt and damages aforesaid: And the said *F.* being so, as aforesaid, and permitted to escape. in the custody of the said *T.* in execution for the said debt and damages in form aforesaid, the said *T.* afterwards, *to wit*, on the 1st day of *April* in the 7th year of the reign of our said late lord king *William* the third, then being warden of the said prison of the said lord the king as aforesaid,

said, had permitted the said *F.* to go at large freely and voluntarily where he would, and to escape out of the said prison and out of his custody, *to wit*, at *London* aforesaid, in the parish and ward aforesaid, the said *Sir A.* being then no way satisfied for the said debt and damages, or any parcel thereof; *Whereby* an action had accrued to the said *Sir A.* to demand and have of the said *T.* the said 1002 *l.* 6 *s.* Yet the said *T.* although he had been often requested, had not then rendered the said 1002 *l.* 6 *s.* to the said *Sir A.* but had then intirely refused and then refused to render the same to him; Wherefore the said *Sir A.* then said he had been injured and had damage to the value of 500 *l.* and thereupon he then prayed remedy, &c. With this that he the said *Sir A.* would then verify that the said judgment then remained in its full force and strength, no ways revoked, reversed, annulled, vacated or satisfied, &c. and he then found pledges of prosecuting, *to wit*, *John Doe* and *Richard Roe*: Upon which said bill first mentioned in the said court of the said late king before the said justices of the said late king of the Bench at *Westminster*, such proceedings were then afterwards, *to wit*, in that same term of *Easter* in the said 7th year of the reign of the said late king, that the said *Sir A. H.* by the consideration of the same court, recovered against the said *T. F.* the said debt of 1002 *l.* 6 *s.* and his damages by occasion of the detaining the debt to

80 *s.*

*Judgment
against the
warden.*

80 s. adjudged by the said court of the said late king to the said Sir *A.* and that the said *T.* should be in mercy, &c. *And the* *Removed by writ of error.*
 said Sir *A.* further says, that after the said judgment in form aforesaid given, and after the making the said writing obligatory, *to wit*, on the 24th day of *May* in the said 7th year of the reign of the said late king, the said *T. F.* by the advice and at the request of the said *J. T.* for the reversing the said judgment, sued forth out of the chancery of the said late king, the same court being then here at *Westminster* in the county of *Middlesex*, a certain writ of the said late king for correcting errors in the said record and proceedings, and in giving the said judgment, directed to Sir *G. T.* Knight, then chief justice of the said late king of the Bench, by which said writ the said late king commanded his said chief justice, that if judgment was given thereupon, that then he should send to the said late king distinctly and plainly under his seal the record and process of the said plaint, with all things touching the same, and the said writ, so that the said late king might have them from the day of the holy *Trinity* in three weeks then next ensuing, wheresoever he should then be in *England*, that inspecting the record and process aforesaid, he might cause further to be done thereupon for amending the said errors, as of right and according to the law and custom of his kingdom of *England* should be meet to be done ; by virtue of

Affirmed in
B. R.

Notice thereof
to the debt.

which said writ for correcting errors, afterwards, at the said day of the return of the said writ, the said record and process of the said plaint, with all things touching the same, were in due manner sent and removed into the court of the said late king before the said late king, the said court then being at *Westminster* in the county of *Middlesex* aforesaid: Upon which such process was upon the said writ for correcting errors in the said court of the said late king before the said late king, that afterwards, *to wit*, in the term of *Easter* in the 8th year of the reign of the said late king, it was considered by the said court of the said late king before the said late king, that the said judgment should stand in its full strength and effect, that the said judgment should be in all things affirmed, as by the record and process of the said judgment remaining in the court of our said lady the present queen before the queen herself at *Westminster* more fully appears; which said judgment still remains in its full force and effect, no ways reversed, annulled or satisfied. And the said Sir *A.* further says, that the said *T.* in his life-time, *to wit*, within the space of two years next after the date of the said writing obligatory, and soon after the making the same, *to wit*, on the 21st day of *May* in the year of our Lord 1695 aforesaid, at *London* aforesaid, *to wit*, in the parish of *St. Mary le Bow*, in the ward of *Cheap* aforesaid, gave

gave notice to the said *J. T.* of the said action so as aforesaid prosecuted by the said Sir *A. H.* against the said *T.* and requested the said *J.* to indemnify the said *T.* therefrom; *Yet* the said *J. T.* within the space ^{who did not} of two years next ensuing the date of the ^{save the war-} said writing obligatory, or at any time afterwards in the life-time of the said *T.* did not indemnify or save harmless the said *T.* ^{den harmless.} *F.* from the said action so as aforesaid prosecuted by the said Sir *A. H. Knt.* against the said *T.* And this he is ready to verify: Wherefore he prays judgment and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c.

L. Agar,
Tho. Pengelly.

Be it remembered, that on the 23d day ^{Memorandum} of *January* in this same term, *C. P.* by ^{of a bill in} *J. B.* his attorney, came here into court ^{C. B.} and exhibited his certain bill against *T. F. Esq;* warden of the prison of our lord the present king of the *Fleet*, present here in court in his proper person, of a plea of debt, the tenor of which said bill follows in these words: *To* the justices of our lord ^{Bill in debt} the king of the Bench, *Middlesex*, *to wit,* ^{against the} *C. P.* by *J. B.* his attorney complains of ^{warden of the} *T. F. Esq;* warden of the prison of our ^{Fleet for the} lord the king of the *Fleet*, present here in ^{escape of a} court in his proper person, for that, that he ^{prisoner in ex-} has not rendered to the said *C. 151 l. 3 s.* of lawful money which he owes him, and ^{scution.}

A a 3 unjustly

*Judgment in
debt against
the prisoner
in B. R.*

unjustly detains, for that, *to wit*, that *Whereas* the said C. heretofore, *to wit*, in the term of *Easter* in the 4th year of the reign of our lord the now king and lady *Mary* late queen of *England*, in the court of our said lord the king and lady the late queen, before the said king and late queen, the said court then being at *Westminster* in the county of *Middlesex*; by the judgment of the said court recovered against *M. G.* otherwise called *M. G.* of *London*, Gent. 150 l. of debt, and also 23 s. for his damages which he sustained, as well by occasion of the detaining that debt as for his cost and charges by him about his suit in that behalf expended, whereof the said *M.* was convicted, as by the record thereof now remaining in the court of our said lord the present king before the king himself at *Westminster* aforesaid more fully appears; which said debt and damages in the whole amount to the said 151 l. 3 s. And afterwards, *to wit*, on *Monday* next after the octave of the purification of the blessed *Mary* in the term of *Hilary* in the 4th and 5th years of the reign of our said lord the king and lady the late queen, in the said court of our said lord the king and lady the late queen before the said king and late queen at *Westminster* aforesaid, the said C. came in his proper person, and the said *M.* then present in the same court, and being then in the said court, at the prayer of the said C. was in due manner committed by the court

*The prisoner
committed in
execution;*

court to *W. B.* Esq; then marshal of the *Marshalsea* of our said lord the king and lady the late queen, before our said lord the king and lady the late queen at *Westminster*, in execution, at the suit of the said *C.* for the debt and damages aforesaid, there to remain until, &c. as by the record and proceedings thereupon remaining in the said court of our said lord the king before the king himself at *Westminster* more fully appears; By virtue of which said commitment the said *W. B.* then and still marshal of the *Marshalsea* aforesaid, took the said *M.* into his custody in execution for the said debt and damages, and had detained and kept the said *M.* in execution for the debt and damages aforesaid: And the said *M.* being as removed by aforesaid in the custody of the marshal of *Habeas Corpus.* the *Marshalsea* aforesaid, in execution for the said debt and damages, afterwards, to wit, on the 7th day of *July* in the 5th year of the reign of our said lord the king and lady the late queen, the said *M.* being so as aforesaid in execution for the said debt and damages, by virtue of the writ of our said lord the king and lady the late queen of *Habeas Corpus cum causa*, in due manner issuing out of the court of our said lord the king and lady the late queen of the Bench here, and directed to the said marshal of the *Marshalsea* of our said lord the king and lady the late queen, before the said lord the king and lady the late queen was brought and had with the said

*committed to
the custody of
the defendant,*

*who permitted
him to escape.*

cause aforesaid, by the marshal of the *Marshalsea* aforesaid, charged in execution with the cause aforesaid, before *J. P.* then being one of the justices of our said lord the king and lady the late queen of the Bench here, at the parish of *St. Clement Danes*; And thereupon the said *M.* then and there, *to wit*, on the said 7th day of *July* in the 5th year aforesaid, at the said parish of *St. Clement Danes* aforesaid, was in due manner committed by the said *J. P.* then one of the justices of our said lord the king and lady the late queen of the Bench here as aforesaid, to the custody of the said *T. F.* then and yet warden of the prison of the *Fleet* aforesaid, charged in execution for the debt and damages aforesaid, as by the record and proceedings thereupon remaining in the said court of the Bench here more fully appears; by virtue of which said commitment the said *T. F.* then being warden of the said prison of the *Fleet*, then and there had and detained the said *M.* in his custody, in execution for the debt and damages aforesaid; The said *T. F.* then and still being warden of the said prison of the *Fleet*, afterwards, *to wit*, on the 23d day of *November* in the 6th year of the reign of our said lord the king and lady the late queen, at the said parish of *St. Clement Danes*, well knowing the premisses, no ways regarding the duty of his office, but contriving and fraudulently intending to cause the said debt and damages to be wholly

wholly lost, against the will and without the licence and notice of the said C. the said C. being no ways satisfied for the said debt and damages, or any parcel thereof, then and there permitted the said M. to go at large where he would, and to escape out of the custody of the said T. F. then and yet being warden of the said prison of the *Fleet*, and out of the said execution; Whereby an action accrued to the said C. *Actio accre-*
 to demand and have of the said T. F. the *vit.*
 said 151 l. 3 s. *Tet* the said T. F. has not yet rendered the said 151 l. 3 s. to the said C. but has intirely refused to render the same to him. Wherefore he says he is injured, and has damage to the value of 20 l. And thereupon he prays remedy, &c. Pledges of prosecuting J. D. and R. R.

And the said T. F. in his proper person *Demurrer to*
 comes and defends the force and injury *the bill.*
 when, &c. And says, that the said declaration, and the matter therein contained, are not sufficient in law for the said T. to have and maintain his said declaration against the said T. And that he the said T. has no need, and is not bound by the law of the land in any manner to answer to the said declaration made in manner and form aforesaid; And this he is ready to verify. Wherefore for default of a sufficient declaration, the said T. prays judgment, and that the said C. may be barred from having his said action thereupon against the said T.

And

Joinder.

And the said C. for that he has in his said declaration above declared sufficient matter in law, to have and maintain his said action against the said T. which he is ready to verify; which said matter the said T. does not deny, nor any ways answer thereto, but intirely refuses to admit the verifying the same, as before, prays judgment, and his said debt, together with his damages, by occasion of the detaining that debt, to be adjudged to him, &c. *And* because the justices here would advise themselves of and upon the premisses, before they give their judgment thereupon, day is given unto the said parties here, until *Wednesday* next after 15 days of *Easter*, to hear their judgment thereupon, for that the said justices here are not yet, &c. *At which day* here came as well the said C. by his attorney afore-said, as the said T. in his proper person, and hereupon the premisses being seen and fully understood by the justices here, it seems to the said justices here, that the declaration and matter therein contained are sufficient in law for the said C. to have and maintain his said action against the said T. as the said C. has above alledged. *Therefore* it is considered, that the said C. recover against the said T. his said debt, and his damages by occasion of the detaining that debt, to 100 s. adjudged by the court here to the said C. by his assent. *And* the said T. in mercy, &c.

*Continuance
by Cur' advi-
sar'.*

*Judgment for
the plaintiff.*

Demurrer.

Demurrer.

AND the said *J. L.* saith, that the *Demurrer to a*
 conusance of the said *J. C.* of the *conusance in*
 taking of the cattle, goods and chattels *replevin. C.B.*
 aforesaid of him the said *J. L.* in the
 said place in which, &c. as bailiff of the
 said *T. D.* and the matter therein con-
 tained, are insufficient in law to maintain
 him the said *J. C.* to acknowledge the
 taking of the said cattle, goods and chat-
 tels in the said place in which, &c. to be
 just, and that he the said *J. L.* needeth
 not, neither by the law of the land is he
 bound to answer to the said conusance in
 manner and form aforesaid made and
 pleaded; And this he is ready to verify:
 Wherefore for default of a sufficient co-
 nusance in this behalf, he the said *J. L.*
 prays judgment, and his damages, by
 means of the taking and unjust detention
 of the said cattle, goods and chattels, to be
 adjudged unto him, &c. And for causes of *Causes of de-*
 demurrer in law upon the said conusance, *murrer.*
 he the said *J. L.* according to the form
 of the statute in such case lately made and
 provided, sheweth to the court here
 the following causes, to wit, that the said
J. C. in and by his said conusance hath
 not averred, or shewn that the said yearly
 rent of 4 *l.* or any part thereof, was due
 and in arrear at the time in which the said
 cattle, goods and chattels were so taken as
 aforesaid.

aforesaid. And for that the said *J. C.* in and by his said counsance hath not averred or shewn that *E. J.* in the said counsance named, is dead; And for that the said counsance is uncertain and wants form, &c.

J. Belfield.

*Demurrer to
evidence at
Nisi Prius.*

And the jurors of the jury, whereof mention is within made, being demanded, also came, who to speak the truth of the within contained were chosen, tried and sworn; Upon which the said *A.* by one *L. P.* serjeant at law, then of the council of the said *A.* in maintenance of the issue within joined, before the said justices of assize shewed in evidence to the said jurors, and said that, &c.

And the said *S.* by one *R. B.* then of his council, says, that the evidence and allegations aforesaid; above alledged on the behalf of the said *A.* are not sufficient in law to maintain the said issue, to which he has no need, nor is he bound by the law of the land to answer. Wherefore for default of sufficient evidence in this behalf, he prays that the said jurors may be discharged from giving their verdict in the premisses; And that the said *A.* may be precluded from having his said action against him the said *S.* &c.

*Joinder in de-
murrer.*

And the said *A.* for that he has shewn sufficient matter in maintenance of the said issue in evidence to the said jurors, which matter the said *S.* does not deny, nor in any manner answer thereto, prays judgment, and that the said jurors thereof may

may be discharged; And that the said S. may be convicted of the premisses, &c.

Whereupon the said jurors by the court *Jurors discharged.* here are discharged of the premisses. And charged. day is thereupon given to the said parties *Day in C. B.* before the justices within written at *West-* *minster,* from the day of St. Michael in three weeks within written, to hear their judgment thereupon, &c.

And the said R. D. by T. C. his attorney comes and defends the force and injury when, &c. And craves oyer of the said writ of our lord the king of privilege; And it is read to him in these words, to wit, George II. &c. Witness, &c. Which being read and heard, the said R. prays judgment of the writ and declaration of him the said W. O B. aforesaid; because he says, that the said writ and declaration thereupon aforesaid in manner and form aforesaid made and declared, and the matter in them contained, are not sufficient in the law for the said W. his action aforesaid against him the said R. to have and maintain, to which said writ and declaration in manner and form aforesaid made and declared, he hath no need, nor by the law of the realm is held or obliged in any manner to answer; And this he is ready to verify: Wherefore for want of a sufficient writ and declaration in this behalf, the said R. prays judgment, and that the said W. from his action aforesaid may be debarred, &c.

And for causes of demurrer in law in this behalf, *Causes of demurrer.*

Writ tested before the cause of action laid in the declaration.

Judgment for the defendant for default of the plaintiff's joining in demurrer.

behalf, he the said R. according to the form of the statutes in such like cases made and provided, shews to the court these following, that is to say, for this, that it appears to the court that the same writ of our said lord the king of privilege was had and sued out upon the said 3d day of July in the 8th year of the reign of our said lord the king; Which day of suing out thereof was before the day on which the said W. has in his said declaration thereupon alledged and declared, that the trespasses, assaults, batteries, woundings and imprisonments, charged upon him the said R. in and by the said declaration, were done and committed; And also for this, that between the said writ and declaration are diverse variances; And also for this, that the said declaration in form aforesaid made and declared, is in itself repugnant, insensible, contradictory, and wanteth form, &c. And hereupon the said R. D. demands the aforesaid W. O B. to join in demurrer with him the said R. And hereupon a day is given by the court of our said lord the king of the bench here to the said W. before his majesty's justices at *Westminster*, until —next after— to join in the said demurrer in law with the said R. And the said W. at the same day being solemnly required came not, neither is his writ of our said lord the king of privilege aforesaid against the said R. further prosecuted, but made default. Therefore it is considered

dered, that the said *W.* take nothing by his said writ, but that he and his pledges to prosecute, to wit, *J. D.* and *R. R.* be thereof in mercy. And that the said *R.* do go thereof without day, *Ec.* And further it is considered by the court here, that the said *R.* recover against the said *W.* 3*l.* 16*s.* 8*d.* for his expences and costs by him about his defence in this part sustained to the said *R.* by the court here, according to the form of the statute in such case lately made and provided, adjudged, *Ec.* And that the said *R.* have his execution for the same, *Ec.*

And the said *E. H.* saith, that the said *Demurrer* to a plea of him the said *T. S.* in manner and form afore said above pleaded, and the matter therein contained, are not sufficient in law to bar the said *E.* from having his said action against him the said *T.* and that he the said *E.* hath no need, nor is he obliged by the law of the land to answer the said plea of him the said *T.* in manner and form above said above pleaded, And this he is ready to verify: Wherefore for want of a sufficient plea in this behalf, the said *E.* prays judgment, and that his said debt, together with his damages by reason of the detaining of the debt, may be adjudged to him, *Ec.* And for causes of demurring in law in this behalf, the said *E. H.* according to the form of the statute in such cases made and provided, shews to the court here these causes following, (that is to say) For this, that the said

Demurrer to a plea of Nil Debet to a declaration of debt on a bail bond.

said *T. S.* hath not by his said plea particularly denied nor confessed the said deed in the said declaration alledged; And also for this, that the said *T.* is estopped by the said deed to say that he doth not owe the money in the said deed mentioned; And ought to have shewn by his plea, how he is discharged from the same.

Joinder.

And the said *T. S.* saith, that the said plea by him the said *T.* in manner and form aforesaid pleaded, and the matter therein contained, are good and sufficient in the law to bar the said *E.* from having his said action against him the said *T.* which said plea, and the matter therein contained, he the said *T.* is ready to verify; And because the said *E.* to the said plea hath not answered, nor the same hitherto in any manner gainsaid, he the said *T.* doth pray judgment, and that he the said *E.* may be barred from having against him the said *T.* his action aforesaid, &c.

Ejectment.

*Declaration in
trespass and
ejectment on a
double demise.
C. B.*

YORKSHIRE, to wit, *A. B.* late of, &c. was attached to answer *C. D.* in a plea, wherefore with force and arms he entered into 500 acres of land, &c. in the parish of *S.* in the county aforesaid, which *E. F.* demised to the said *C.* for a term of years which is not yet expired, And into 500 other acres, &c. in the parish of *S.* aforesaid in the county aforesaid, said,

said, which G. H. demised to the said C. for a term of years which is not yet expired, and ejected him from his said several farms, and other wrongs to him did, to the great damage of the said C. And against the peace of our lord the now king, &c. And whereupon the said C. by W. R. his attorney complains, *That Whereas* the said E. *First demise.*

on the — day of — in the — year of the reign of the said lord the king at the castle of T. aforesaid, had demised to the said C. the tenements aforesaid first above mentioned, with the appurtenances, to have and to hold the same tenements first abovementioned, with the appurtenances to the said C. and his assigns, from the — day of — then last past to the full end and term of — years from thence next following, and fully to be complete and ended. *And Whereas* also the said G. on *Second demise.*

the same — day of — in the said — year of the reign of the said lord the king, at the castle of T. aforesaid, had demised to the said C. the tenements aforesaid last abovementioned, with the appurtenances, To have and to hold the same tenements last abovementioned, with the appurtenances, to the said C. and his assigns, from the said — day of — then last past, to the full end and term of — from thence next following, and fully to be complete and ended. *By virtue* of which said several demises, the said C. entered into the several tenements aforesaid, with the appurtenances, and was possessed thereof.

And the said C. being so possessed thereof, the said W. afterwards, that is to say on the — day of — in the — year of the reign of the said lord the king, with force and arms, that is to say, with swords, staves and knives, entered into the said several tenements above specified, with the appurtenances respectively demised to the said C. in manner aforesaid, in and upon the possession of the said C. thereof, and ejected the said C. out of his said several farms, his said several terms therein not being ended, And other enormities, &c. To the great damage, &c. And against the peace, &c. Whereupon the said C. saith, that he is injured and endamaged to the value of 10*l*. And thereof he bringeth suit, &c.

J. K. L. M. &c.

*Notice to the
tenant.*

I am informed that you are in possession of, or claim title to the premisses in this declaration of ejectment mentioned; or to some part thereof. And I, being sued in this action as a casual ejector, and having no claim or title to the same, do advise you to appear in — term next in his majesty's court of common bench at *Westminster*, by some attorney of that court, and then and there, by rule of the same court, to cause yourselves to be made defendants in my stead, otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession. I am

Your loving friend,
A. B.

Homine replegiando.

Cooke.

*Michaelmas Term in the First Year
of King George the Second.*

Berks, **N.** L. Gent. was attached to *Count in Ho-*
to wit, answer *W. H. and S.* his mine replegi-
 wife, of a plea, Wherefore the said *S.* he ando.
 took, and taken holds, &c. *And where-* C. B.
upon the said W. and S. by H. M. their at- Salk. 5, 705.
 torney complain that the said *N.* on the Lilly's Ent.
 20th day of *May* in the 1st year of the 293.
 reign of our lord the present king at *Wan-*
taga in the county aforesaid, took the
 said *S.* and her taken still holds: Where-
 fore they say that they are injured, and
 have damage to the value of 5000*l.* And
 thereupon they bring suit, &c.

And the said N. in his proper person *Plea, Non*
 comes and defends the force and injury, cepit.
 when, &c. and says, that he did not take
 the said *S.* in the said declaration men-
 tioned, in manner and form as the said
W. H. and S. his wife above complain a-
 gainst him; And of this he puts himself
 upon the country.

Hil. 8 Geo. 2. rot. 1260. C. B.

Herefordshire, **R.** *S.* was attached to an-
to wit, swer *W. B. Gent.* of a
 plea; Wherefore he took *S.* the wife of
 B b 2 the

the said *W.* and keeps her taken, &c.
And whereupon the said *W.* by *J. C.* his attorney complains that the said *R.* on the 1st day of *June* in the year of our Lord 1734, at the parish of *B.* in the county aforesaid, took the said *S.* the wife of the said *W.* and keeps her yet taken; Whereby he says, that he is prejudiced and damnified to the value of 500*l.* And thereupon he brings suit, &c.

Plea *non cepit*; verdict *pro quer.* 100*l.* damages.

Judgments.

Judgment in case by Nildicit against one deft. the action being brought against three defts. and two only plead.
 3 Mod. 101.
 Carth. 19.
 Comb. 18, 39.
 2 Show. 469.

AND now at this day, to wit, Saturday next after the octave of *St. Hilary*, in this same term, until which day the said *E. S. T. P.* and *H. M.* had leave to imparl to the said bill, and then to answer, &c. before the lord the king at *Westminster* comes as well the said *G. R.* by his attorney aforesaid, as the said *E.* and *T.* by *R. G.* their attorney, and the said *H.* at the same day, although solemnly demanded, does not come, neither does he say any thing thereupon, in bar or preclusion of the action of the said *G.* by which the said *G.* remains thereupon against the said *H.* undefended, &c. For which it is considered that the said *G.* ought to recover against the said *H.* his damages by occasion of the premisses; but because it is not known whether the said *E.*

E. and *J.* may be convicted of the premisses above laid to their charge or not, and if they can be convicted, it is convenient that there should be but one taxation of the said damages; *Therefore* let the inquisition for damages against the said *H.* stay until the plea between the said *G.* and the said *E.* and *T.* be determined in some lawful manner, &c. And the said *E. S.* and *T. P.* (all and all manner of executions as to the said bill being saved to them) defend the wrong and injury. And the said *E.* says, &c. (the defendants pleaded severally in abatement the privilege of *C. B.*)

And the said *C. K.* by *J. C.* his attorney comes and defends the force and injury, when, &c. and says nothing in bar or preclusion of the aforesaid action of the said *G. D.* whereby the said *G.* remains against the said *C.* therein undefended; Wherefore the said *G.* ought to recover against the said *C.* his damages occasioned by not performing the promises and undertakings aforesaid: But because it is not known what damages the said *G.* has sustained by occasion of the not performing the promises and undertakings aforesaid; *Therefore* the sheriff is commanded, that by the oath of 12 honest and lawful men of his bailiwick, he diligently inquire what damages the said *G.* has sustained, as well by occasion of not performing the promises and undertakings aforesaid, as for his costs and charges by him about his suit in this

Unica taxation.

Judgment by Nil dicit in case sur assumps. at the suit of an attorney. C. B.

Inquiry awarded.

The return.

behalf laid out, and the inquisition which the sheriff shall make thereon, he make appear here on *Monday* next after the octave of *St. Martin*, under his seal and the the seals of those by whose oath he shall take such inquisition; *At which day* here cometh the said *G.* in his proper person, and the sheriff, *to wit*, *H. M. Esq;* and *R. H. Esq;* now return here a certain inquisition taken before him at the court-house *Westminster* in the county aforesaid, the 24th day of *November* in the 14th year of the reign of our lord the now king, by the oath of 12 honest and lawful men of his bailiwick, by which it is found, that the said *G.* hath sustained damages by occasion of the premisses, besides his costs and charges by him about his suit in this behalf laid out, to 31 *l.* 10 *s.* and for those costs and charges to 20 *s.* Therefore it is considered, that the said *G.* recover against the said *C.* his damages aforesaid, by the inquisition aforesaid in form aforesaid found to 32 *l.* 10 *s.* and also 10 *l.* 10 *s.* to the said *G.* at his request, for his costs and charges by the court here of increase adjudged, which said damages amount in the whole to 43 *l.* And the said *C.* in mercy, &c.

Final judgment.

Judgment signed 19 Jan. 1740.

Mercy.

Judgment by Nil dicit in trespass after a new assignment. C. B. 2 Vent. 49.

And the said *F.* says nothing in bar or preclusion of the said action of the said *S.* of the said trespass made in the said tenements newly assigned, whereby the said *S.* remains against the said *F.* therein undefended; Wherefore the said *S.* ought to recover

recover against the said *R.* his damages by occasion of the said trespass: But because it is not known what damages the said *S.* has sustained by occasion of the said trespass, the sheriff is commanded, &c.

And the said *L.* by *R. N.* his attorney comes and defends the force and injury, when, &c. and says nothing in bar of the said action of the said *R.* whereby the said *R.* remains against the said *L.* thereof undefended: Therefore it is considered, that the said *R.* recover against the said *L.* his said debt, and his damages by the occasion of the detaining of that debt, to 40 s. to the said *R.* by his assent by the court here adjudged, and the said *L.* in mercy, &c.

And the said *S.* in his proper person comes and defends the force and injury, &c. and the said *J.* prays that the said *S.* may answer to his said bill, and the said *S.* prays leave thereupon of imparling here until Monday next after the octave of St. Hilary; And he has, &c. The same day is given to the said *J.* here, &c. At which day here came as well the said *J.* by his attorney aforesaid, as the said *S.* in his proper person; and the said *S.* further prays leave thereupon of imparling here until Wednesday next after 15 days of Easter; And he has, &c. The same day is given to the said *J.* &c. At which day here came as well the said *J.* by his attorney aforesaid, as the said *S.* in his proper person; and the said *S.* further prays leave thereupon of imparling here until Friday next after

Judgment in
debt by Nil
dicit. C. B.

Judgment in
debt by Nil
dicit against
an attorney,
with impar-
lance. C. B.

the morrow of the holy *Trinity*; And he has, &c. The same day is given to the said *J.* here, &c. At which day here came as well the said *J.* by his attorney aforesaid, as the said *S.* in his proper person, and as before the said *J.* prays that the said *S.* may answer to his said bill, and the said *S.* as before defends the force and injury, &c. and says nothing in bar or preclusion of the said action of the said *J.* whereby the said *J.* remains against the said *S.* therein undefended: Therefore it is considered that the said *J.* recover against the said *S.* his said debt and his damages by the occasion of the detaining that debt to 30 s. to the said *J.* by his assent, by the court here adjudged. And the said *S.* in mercy, &c.

*Judgment in
debt by Nil
dicit against
an executrix.
C. B.*

And the said *B.* by *W. R.* her attorney comes and defends the force and injury, when, &c. and says nothing in bar or preclusion of the said action of the said *T.* and *D.* whereby the said *T.* and *D.* remain against the said *B.* therein undefended: Therefore it is considered, that the said *T.* and *D.* recover against the said *B.* their said debt and their damages by the occasion of the detaining of that debt to 50 s. to the said *T.* and *D.* by their assent by the court here adjudged, to be levied of the goods and chattels which were of the said earl at the time of his death, being in the hands of the said *B.* to be administered, if she has so much thereof in her hands to be administered, and if she has not, then the

the said damages to be levied of the proper goods and chattels of the said *B.* And the said *B.* in mercy, &c.

And the said *B.* by *W. R.* her attorney comes and defends the force and injury, when, &c. and says nothing in bar or preclusion of the said action of the said *T.* and *D.* whereby the said *T.* and *D.* remain against the said *B.* therein undefended: And hereupon the said *T.* and *D.* freely here in court remit to the said *B.* the said 100 *l.* and 400 *l.* in the said declaration first demanded, and pray judgment against the said *B.* for the said 100 *l.* and 400 *l.* in the same declaration last demanded, together with their damages, costs and charges by the occasion of the detaining of the same 100 *l.* and 400 *l.* to be adjudged to them, &c. Therefore it is considered, that the said *T.* and *D.* recover against the said *B.* the said 100 *l.* and 400 *l.* in the said declaration last demanded, and their damages by the occasion of the detaining of the same 100 *l.* and 400 *l.* to 7 *l.* to the said *T.* and *D.* by their assent, by the court here adjudged to be levied of the goods and chattels which were of the said earl at the time of his death, being in the hands of the said *D.* to be administered, if she has so much thereof in her hands to be administered, and if she has not, then the said damages to be levied of the proper goods and chattels of the said *B.* And the said *B.* in mercy, &c. And that the said *B.* be quit of

Judgment in debt by Nil dicit against an executrix, with a Remittur of part of the debt.
C. B.
3 Mod. 153.
Salk. 65.
Comb. 87.

of the said 100 l. and 400 l. in the said declaration first demanded, &c.

*Judgment in
ejectment by
Nil dicit.
C. B.*

And the said J. by R. B. his attorney comes and defends the force and injury, when, &c. and says nothing in bar or preclusion of the said action of the said C. by which the said C. remains thereupon undefended against the said J. Therefore it is considered, that the said C. recover against the said J. his said term yet to come of and in the tenements aforesaid, with the appurtenances, and his damages by occasion of the said trespass and ejectment; But because it is unknown what damages the said C. has sustained by occasion of the trespass and ejectment aforesaid; It is commanded to the sheriff, that by the oath of 12 good and lawful men of his county he diligently inquire what damages the said C. has sustained, as well by occasion of the trespass and ejectment aforesaid, as for his costs and charges by him expended about his suit in this behalf; And that the inquisition which, &c. he make apparent here from the day of Easter in 15 days, under the seal, &c. and the seals, &c. The same day is given to the said J. here, &c. And upon this the said C. prays the writ of our lord the king to be directed to the sheriff aforesaid, to cause him to have possession of his said term yet to come of and in the tenements aforesaid, with the appurtenances; and it is granted to him, returnable here at the time aforesaid, &c.

*Award of
writ of in-
quiry.*

*Award of
Habere fac.
possessionem.*

And

And the said *W.* by *H. G.* his attorney ^{Judgment for} comes and defends the force and injury, ^{the plt. by} when, &c. and the same attorney says, ^{Non sum in-} that he is not informed by the said *W.* of ^{formatus in} any answer to be given for the said *W.* ^{case sur as-} to the said *E.* in the said plaint, and he ^{sumpt. C. B.} says nothing else thereupon, by which the said *E.* remains thereupon undefended against the said *W.* [*the rest is exactly the same as in a judgment by Nil dicit.*]

And the said *E.* by *T. K.* his attorney ^{Judgment in} comes and defends the force and injury, ^{debt by Non} when, &c. and the said attorney says, ^{sum informa-} that he is not informed by the said *E.* of ^{tus. C. B.} any answer to be given for the said *E.* to the said *A.* and *B.* in the said plaint; and he says nothing else thereupon, whereby the said *A.* and *B.* remain against the said *E.* therein undefended: *Therefore* it is considered, that the said *A.* and *B.* recover against the said *E.* their said debt and their damages by occasion of the detaining that debt, to 63 s. to the same *A.* and *B.* by their assent by the court here adjudged. And the said *E.* in mercy, &c.

And the said *H.* by *R. C.* his attorney ^{Judgment in} comes and defends the force and injury, ^{ejectment by} when, &c. and the same attorney says, ^{Non sum in-} that he is not informed by the said *H.* of ^{form. C. B.} any answer to be given for the said *H.* to the said *G.* in the aforesaid plaint, and he says nothing else thereupon, by which the said *C.* remains thereupon undefended against the said *H.* *Therefore* it is considered that the said *C.* recover against the said

*Judgment in
debt against
an executor
by Relicta ve-
rificat. after
Plene admi-
nistravit
pleaded.*

said *H.* his said term yet to come of and in the manor and tenements aforesaid, with the appurtenances; Also the said *C.* ought to recover against the said *H.* his damages by occasion of the trespass and ejectment aforesaid; but because [*the rest exactly the same as in judgment by Nil dicit.*]

At which day come here as well the said *C.* as the said *A.* by their attorneys aforesaid, and hereupon the said *A.* departing from his averment aforesaid by him above pretended, saith, that he cannot gainsay the action aforesaid of the said *C.* nor that he on the said day of obtaining the original writ of the said *C.* had divers goods and chattels which were the said *T.*'s at the time of his death in his hands to be administered to the value of the said debt, whereout he could have satisfied the said *C.* for that debt, as the said *A.* hath above alledged: Therefore it is considered, that the said *C.* recover against the said *A.* his debt aforesaid, to be levied of the goods and chattels which were the said *T.*'s at the time of his death, in the hands of the said *A.* to be administered, and 80 s. for his damages by occasion of detaining that debt, adjudged by the court here to the said *C.* with his assent, to be levied also of the said goods and chattels, if the said *A.* hath so much thereof to be administered, and if he hath not, then the damages aforesaid to be levied of the said *A.*'s proper goods and chattels. And the said *A.* in mercy, &c.

At

At which day come here as well the said *Judgment in*
 C as the said A. by their attorneys afore-^{case against}
 said; And hereupon the same A. depart-^{an executor by}
 ing from his averment and proof by him ^{Relicta verific.}
 above pretended, saith, that he cannot ^{after Plene}
 gainsay the action aforesaid of the said C. ^{administravit}
 or that the said J. in his life-time under-^{pleaded.}
 took in manner and form as the said C. ^{Signed for not}
 above complains against him; By reason ^{paying for the}
 whereof the said C. ought to recover a-^{issue book.}
 gainst the said A. his damages by occasion
 of the non-performance of the promises
 and undertakings aforesaid: But because
 it is unknown, &c.

And the said L. in his proper person ^{Imparlane.}
 comes and defends the force and injury,
 when, &c. and prays leave to imparl here
 until Friday next after the morrow of the
 holy Trinity, and he hath it, &c. The same
 day is given to the said J. here, &c. And
 now here at this day, to wit, the said Fri-
 day, &c. come as well the said J. by his
 attorney aforesaid, as the said L. in his
 proper person; and hereupon the said J.
 prays that the said L. may answer to his
 aforesaid bill. And the said L. as before ^{Plea Non est}
 defends the force and injury, when, &c. ^{factum.}
 and says, that he ought not to be charged
 with the debt aforesaid, by virtue of the
 writing aforesaid, because he says, that
 that writing is not his deed; And of this
 he puts himself upon the country; And
 the said J. likewise doth the same. ^{Judgment by}
 fore, &c. At which day come here as well ^{Relicta verific.}
 the said J. by his said attorney, as the ^{catione.}
 said

said *L.* in his proper person ; and hereupon the said *L.* waiving his plea aforesaid by him above pleaded, says, that he cannot deny the action of the said *J.* nor but that the said writing in his deed, nor but that he owes to the aforesaid *J.* the said 200 *l.* in manner and form as the said *J.* hath above declared against him : *Therefore* it is considered, &c.

*Judgment of
Non Pros' in
replevin, for
not entering
the issue.*

And hereupon the said *B.* although solemnly demanded, cometh not, nor hath he entered his issue aforesaid, neither doth he further prosecute his writ aforesaid ; *Therefore* it is considered, that the said *B.* and his pledges for prosecuting thereof be in mercy, &c. let the names of the pledges be inquired, &c. and that the said *J. S.* go thereof without day, &c. and that he have a return of the goods and chattels aforesaid, and in what manner, &c. let the sheriff make known hereon. — *And* hereupon the said *J. S.* prays that the justices here will at their discretion here in court assess his damages sustained, as well by reason of the premisses as for his costs and charges by him expended about his suit in this behalf : *Whereupon* the said justices here, as well at the prayer of the said *J. S.* as by the consent of the said *B.* do assess the damages of him the said *J. S.* sustained as well by reason of the premisses as for his said costs and charges, to — : *Therefore* it is considered that the said *J. S.* recover against the said *B.* his damages aforesaid assessed by the justices

ces here in form aforesaid. And the said B. in mercy, &c.

At which day before our lord the king at Westminster cometh the said D. by his attorney aforesaid, and the said P. although called cometh not; and it appearing to the court of our said lord the king now here, that the said P. hath neglected to bring the issue above joined on to be tried, according to the course and practice of the said court of our said lord the king now here: Therefore according to the form of the statute in that case lately made and provided, it is considered by the said court that the said P. take nothing by his aforesaid bill, but that he and his pledges of prosecuting, to wit, John Doe and Richard Roe, be in mercy, &c. and that the said D. go thereof without day; And it is further considered that the said D. recover against the said P. 7*l.* for his costs and charges by him about his defence in this behalf sustained, adjudged by the court of our said lord the king now here to the said D. at his request, according to the form of the statute in the like case made and provided, and that the said D. have execution thereof.

And because the justices here will advise themselves of and upon the premisses before they give judgment thereupon, day is given to the parties here until from the day of St. Michael in three weeks, to hear their judgment thereupon, for that the same justices are not thereupon, &c. At which day comes here as well the said &

as the said *N.* by their attorneys aforesaid, and upon this the said premisses being seen and fully understood by the justices, it seems to the same justices here, that the said plea of the said *N.* above pleaded in bar, and the matter contained in the same, are not sufficient in law to preclude the said *S.* from having his action against the said *N.* as the said *S.* has above alledged; For which the said *S.* ought to recover his damages by occasion of the premisses against the said *N.* But because it is not known what damages, &c.

*Judgment in
debt for the
plt. on a de-
murrer to a
plea. B. R.*

At which day before the lord the king at *Westminster* the said parties come by their attorneys aforesaid; upon which, all and singular the premisses being seen and fully understood by the court of the said lord the king here, and mature deliberation being had thereupon, it seems to the court of the said lord the king here, that the plea of the said *W. P.* above pleaded in bar of the said action of the said *D. W.* is not sufficient in law to preclude the said *D.* from having her said action against the said *W. P.* Therefore it is considered that the said *D.* recover against the said *W.* her said debt and also 9 *l.* for her damages which she has sustained, as well by the occasion of the detaining that debt, as for her costs and charges expended by her about her suit in this behalf adjudged by the court of the said lord the king now here to the said *D.* by her assent. And the said *W. P.* in mercy, &c.

At

At which day before the lord the king *Judgment of*
at Westminster comes as well the said T. S. *Respondens*
in his proper person as the said T. K. and *ouster on a*
B. by their attorneys aforesaid; upon *demurrer to a*
which all and singular the premisses being *plea in abate-*
seen and by the court here fully under- *ment in case.*
B. R.

stood, and mature deliberation being had
thereupon, for that it seems to the said
court of the lord the king now here, that
the said plea above pleaded by the said
T. K. and B. in manner and form aforesaid,
and the matter in the same contained, are
not sufficient to quash the bill of the said T.
S. thereupon against the said T. K. and B.
It is considered that the said T. K. and B.
answer further to the said bill of the said
T. S. And upon this the said T. K. and B.
being solemnly demanded, come by J. G.
their attorney, and defend the force and
injury, when, &c. and pray, &c. [De-
murrer.]

At which day before the lord the king *Judgment of*
at Westminster came the parties aforesaid, *Respondens*
by their attorneys aforesaid, whereupon *ouster on a*
all and singular the premisses aforesaid be- *demurrer to a*
ing seen and by the court here fully un- *replication on*
derstood, and mature deliberation being *a plea in a-*
had thereupon, for that it seems to the *batement.*
B. R.

said court of the lord the king now here,
that the said plea by the said R. in man-
ner and form aforesaid above in replying
pleaded, and the matter therein contained,
are good and sufficient in law to compel
the said Sir J. to answer farther to the
said bill of the said R. thereupon against

the said Sir J. It is considered, that the said Sir J. answer further to the said bill of the said R. And hereupon the said Sir J. S. Knt. and Bart. against whom the said R. above declared, by the name of Sir J. S. Bart. being solemnly called by the said H. T. his attorney comes and defends the force and injury, when, &c. and says, &c.

Award of inquiry in case sur assumpsit.
C. B.

1 D. 70. p. 7.
3 Mod. 190.

But because it is unknown what damages the said E. has sustained by occasion of the premisses, It is commanded to the sheriff, that by the oath of good and lawful men of the county aforesaid, he diligently inquire what damages the said E. has sustained, as well by occasion of the premisses aforesaid, as for her costs and charges expended by her about her suit in this behalf, and let the sheriff make apparent the inquisition which he shall make thereof to the justices of the lord the king at Westminster from the day of Easter in 15 days, under his seal and the seals, &c.

Vic non misit brieve.

Alias awarded.

At which day here cometh the said E. by her attorney aforesaid, and the sheriff did nothing therein, neither did he send the writ: Therefore, as at first, let there be another writ to him thereupon in form aforesaid, returnable here from the day of the holy Trinity in three weeks, &c. At which day here comes the said E. by her attorney aforesaid, and the sheriff, namely Sir B. T. Knt. and Sir T. K. Knt. now returns here a certain inquisition taken before him at the Sugar-laaf in Hatton-garden in the county aforesaid, on the 18th day of June last

last past, by the oath of 12, &c. by which it is found, that the said E. has sustained damages by occasion of the premisses, over and above her costs and charges laid out by her about her suit in this behalf, to 200 l. and for those costs and charges to 20 s. Therefore, &c.

Scire facias Vic' London' against the tenants of F. R. on a judgment recovered against him by J. D. Return Nihil. Testatum Vic' Ebor'. Vic' non misit b're. Alias Sci' fac'. Return Scire feci to Sir S. D. tenant of part, and to J. R. tenant of other part.

And now here at this day, to wit, the judgment on said Saturday next after three weeks of St. Michael before the lord the king at Westminster, came as well the said J. D. by his attorney aforesaid, as the said Sir S. D. by S. W. his attorney, and the said J. R. so summoned, &c. at the same day, being solemnly called, came not, but made default: Therefore it is considered, that the said J. D. have execution against the said J. R. of the debt and damages aforesaid, of the lands and tenements whereof the said J. R. is above returned tenant, which were of the said F. R. of which the said F. R. was seised at the time of giving the said judgment, being in the hands of the said J. R. by the default of the said J. R. And upon this the said J. D. by the statute, &c. chuses to be delivered to him a moiety of all the said lands and tenements

with the appurtenances, whereof the said *J. R.* so as aforesaid is returned tenant, which were of the said *F. R.* at the time of giving the said judgment, to hold to the said *J. D.* and his assigns, as their freehold, according to the form of the said statute, until the debt and damages aforesaid shall be thereof levied, and he prays the writ of the same lord the king thereupon, to be directed to the said sheriff of
and awarded. York; And it is granted him, &c. returnable before the said lord the king on Saturday next after the octave of the purification of the blessed virgin *Mary*, &c.

The other debt pleads.

Judgment after two Nihilis on a Sci. fac. to revive a former judgment on a Sci. fac. upon a recognizance of bail. C. B.

And the said Sir *S. D.* says, &c.
 And upon this the said *W. H.* and *A.* pray execution against the said *R. W. E.* and *L.* of the said several sums of money severally acknowledged by them in form aforesaid, according to the form of the judgment of adjudication of execution aforesaid, to be adjudged to them: *Therefore* it is considered, that the said *W. H.* and *A.* have execution against the said *R. W. E.* and *L.* according to the form of the said judgment of adjudication of execution aforesaid by default, &c.

Judgment after two Nihilis on a Sci. fac. upon a recognizance of bail. C. B.

And upon this the said *A.* prays execution against the said *R.* and *W.* of the said several sums of 44*l.* severally acknowledged by them in form aforesaid, and also against the said *L.* of the said 88*l.* acknowledged by him in form aforesaid, according to the form of the said recognizance: *Therefore* it is considered, that the said *A.* have
 exc-

execution against both of them the said R. and W. of the said several sums of 44*l.* severally acknowledged by them in form aforesaid, and against the said L. of the said 88*l.* acknowledged by him in form aforesaid by default, &c.

Therefore it is considered, that the said M. have execution against the said R. of the debt and damages aforesaid by default, &c.

Judgment after one Nihil on a sci. fac. to revive a judgment in debt. C. B.

Therefore it is considered that the said J. recover against the said T. her said debt, and her damages aforesaid, assessed by the said jury in form aforesaid to 21*s.* And also 15*l.* 6*s.* to the said J. at her request, for her said costs and charges, by the court here of increase adjudged: Which said damages in the whole amount to 16*l.* 7*s.* And the said T. in mercy, &c.

Judgment in debt after verdict for the plaintiff. C. B.

And because the justices here are willing to advise themselves of and upon the premisses before they give judgment thereupon, day is given to the said parties here until on the octave of St. Hilary, to hear their judgment thereupon, for that the same justices here are not yet, &c.

Judgment for the defendant in ejectment, on a special verdict. C. B.

At which day here came as well the said T. as the said H. by their attorneys aforesaid. And because the justices here are willing further to advise themselves of and upon the premisses before they give judgment thereupon, day is further given to the said parties here until from the day of *Easter* in 15 days to hear their judgment thereupon, for that the same

justices here are not yet &c. *At which day* here came as well the said *T.* as the said *H.* by their attorneys, &c. *aforsaid*, [*continuances in like manner to the octave of St. Hilary.*] *At which day* here came as well the said *T.* as the said *H.* by their attorneys *aforsaid*; Whereupon the premisses being seen and fully understood by the justices here, it seems to the same justices here, that the said *H.* is in nothing guilty of the trespass and ejectment *aforsaid*, as he, the said *H.* above in pleading for himself, has alledged; *Therefore* it is considered that the said *T.* take nothing by his said writ, but be in mercy for his false clamor thereupon; And that the said *H.* go thereof without day, &c. *Also* it is considered that the said *H.* recover against the said *T.* his damages by occasion of the premisses, to 15 l. 4 s. by the direction of the justices here, to the same *H.* at his request, for his costs and charges by him in that behalf sustained according to the form of the statute, &c. by the court here adjudged, &c.

*Judgment for
the defendant
on a verdict
upon Non as-
sumpsit. C. B.*

Because as well, &c. *At which day* the jury between the parties *aforsaid* in the plea afterwards was thereupon respited between them here until to this day, *to wit*, from the day of *St. Michael* in three weeks then next following, unless the justices of our sovereign lord and lady the king and queen, assigned to take the assises in the county *aforsaid*, by form of the statute, &c. should first come on *Monday* the 15th day

day of September next past, at the town of *Huntingdon* in the county aforesaid. And now here at this day the said *J. S.* comes by his attorney aforesaid, and the said justices of assize, before whom, &c. sent here their record in these words; *Afterwards*. [see postea] Therefore it is considered that the said *J. M.* take nothing by his said writ, but be in mercy for his false clamor thereupon. And that the said *J. S.* go thereupon without day, &c. It is also considered, that the said *J. S.* recover against the said *J. M.* his damages by occasion of the premisses, to 7 l. by the direction of the justices here adjudged by the court here according to the form of the statute, &c. to the said *J. S.* at his request, for his costs and charges by him sustained in this behalf.

Signed 17 November 2 W. & M.

Because as well, &c. At which day the judgment for jury between the parties aforesaid in the plea aforesaid was respited thereupon between them here until to this day, to wit, from the day of the *Holy Trinity* in 3 weeks then next following, unless Sir *B. H. Kne.* chief justice of our lord the king of the bench here assigned by form of the statute, &c. should first come on Saturday the 11th day of June next past, at *Westminster* within the hall there commonly called *Westminster-Hall* in the county aforesaid; And now here at this day the said *G.* comes by his attorney aforesaid. And the said chief justice before whom, &c. sent here his record in these words, *Afterwards*. [see postea] Therefore it is considered, that

the plaintiff on a verdict upon Non assumpsit. C. B.

Signed 29 November

that the said G. do recover his said damages against the said R. to 75*l.* 5*s.* assessed by the said jury in form aforesaid. And also 13*l.* 15*s.* adjudged by the court here, to the said G. at his request of increase for his said costs and charges; Which said damages in the whole amount to 89*l.* And the said R. in mercy, &c.

*Judgment of
repleader af-
ter verdict for
the plaintiff.
B. R.*

Afterwards, &c. [the postea] And upon this the said W. says, that the court of our said lord the king now here ought not to proceed to give judgment upon the said verdict, because he says that the said plea of the said A. above in surrejoining pleaded is not sufficient in law, and the issue arising thereupon is not aptly joined; Upon which the said plea by the said A. above in surrejoining pleaded, and the issue thereupon joined, being seen and understood by the court of the said lord the king, before the king himself, it sufficiently appears to the court of the said lord the king now here, that the said plea above in surrejoining pleaded, is insufficient, and that the issue arising thereupon is not aptly joined; Upon which it is told to the said parties to replead, to wit, to the said A. to surrejoin anew to the said rejoinder of the said W. and that the said parties further proceed thereupon until an issue by the law, or by the country, shall be thereupon joined. *Upon which* the said A. as at first says, &c.

*Judgment in
ejectment af-
ter verdict for
the plaintiff.
C. B.*

*And because [continuance by Cur' advi-
sare vult] At which day here comes as well
the*

the said C. as the said T. by their attorneys aforesaid. And upon this, the premisses being seen and fully understood by the justices here, *It is considered*, that the said C. recover against the said T. his said term yet to come of and in the said tenements, with the appurtenances and his said damages to 40 s. 6d. assessed by the said jury in form aforesaid. And also 7 l. 19 s. 6d. to the said C. at his request, for his said costs and charges by the court here of increase adjudged; Which said damages in the whole amount to 10 l. And that the said T. be taken, &c. And upon this the said C. prays the writ of the lord the king to be directed to the sheriff of the county aforesaid, to cause him to have his possession of his said term yet to come of and in the said tenements, with the appurtenances. And it is granted to him returnable here from the day of Easter in 15 days, &c.

Habere facias possessionem.

And because [continuances by cur' advice vult] At which day here comes as well the said G. as the said E. by their attorneys aforesaid. Upon which, all and singular the premisses aforesaid being seen and fully understood by the justices here, it seems to the same justices that the plea of the said E. above in rejoining pleaded in manner and form aforesaid, and the matter in the same contained, are not sufficient in law to preclude the said G. from having his said action thereupon, as the said G. has within alledged; *It is considered*, C. B.

Judgment in trespass for the plaintiff, after verdict on Not guilty as to part, and a demurrer to a rejoinder as to the residus. Whereupon the jury gave 300 l. damages, as to the issue in fact, and 200 l. contingent damages on the issue in law.

dered, that the said G. recover against the said E. his said several damages to 500 l. and the said 40 s. assessed by the said jury in form aforesaid, And also 28 l. adjudged by the court here to the said G. at his request of increase, for his said Costs and charges, which said damages in the whole amount to 530 l. And that the said E. be taken, &c.

*Judgment in
covenant after
verdict for the
plaintiff. C. B.*

Therefore it is considered, that the said J. recover against the said T. her said damages assessed by the said jury in form aforesaid, to 61 l. And also 34 l. 12 s. 10 d. to the said J. at her request, for her said costs and charges, by the court here of increase adjudged; which said damages in the whole amount to 95 l. 12 s. 10. And the said T. in mercy, &c.

*Judgment for
the defendants
in replevin on
a nonsuit at
Nisi Prius.
C. B.*

[The Postea] Therefore it is considered, that the said W. C. and his pledges for prosecuting are in mercy, &c. *Quer' nom' pleg'* &c. And that the said W. B. J. T. and C. go thereof without day, &c. And that they have a return of the cattle, &c. And in what manner, &c. the sheriff make appear here on the octave of St. Hilary. Also it is considered, that the said W. B. J. T. and C. recover against the said W. C. their said damages assessed by the said jury in form aforesaid to 40 s. 2 d. And also 10 l. 19 s. 10 d. to the said W. B. J. T. and C. at their request for their said costs and charges by the court here of increase adjudged, which said damages in the whole amount to 13 l. &c.

Case

Case against E. S. T. P. and H. M. for accusing G. R. of high treason; M. lets judgment go by default, and the other two plead to issue; the jury give damages 1000l. against S. 500l. against P. and 500l. against M. Whereupon the plaintiff enters a Nolle prosequi as to P. and M. and has judgment against S.

Nolle prosequi after verdict as to two defendants.
3 Mod. 101.
Carl. 19.
Comb. 18, 39.
2 Show. 469.
Cro. Car. 54.
239, 243.

And upon this the said G. in court here confesses that he will not further prosecute against the said T. P. and H. M. or either of them of the plea aforesaid, but wholly disavows and refuses to prosecute further against either of them in the premisses. Therefore it is considered, that the said G. R. recover against the said E. S. the said damages assessed by the said jury in form aforesaid. And also by the court of the said lord the king now here adjudged to the said G. by his assent of increase for his said costs and charges; which said damages in the whole amount to . And that the said E. S. be taken, &c.

2 R. Ab. 100.
1 R. Rep. 30.
1 Bulst. 157.
Styles 299.
1 Sand. 275.
268.
2 Sand. 379.
Rast. Ent.
127. a. 654.
b. 677. b.
583. a. 555. a.
Co. Ent. 650.
Trin. 38 Elia.
ro. 634.
Hil. 1 Car.
ro. 582.
Judgment against the 3d
def. B. R.

Postcas.

Afterwards (that is to say) on the day and year, and at the place within mentioned, comes as well the within named R. L. by his attorney within named, as the within named M. U. in his proper person before Sir J. W. Knight, the chief justice within named. And the jurors of the jury, whereof mention is within made, summoned to be upon that

Postea, verdict for the plt. in case sur assumpsit. C. B.

that jury, being impanelled and drawn by ballot according to the form of the statute, &c. And being called over, come; who to speak the truth of the matters within contained being tried and sworn on their oath say, that the said *M. U.* did undertake and promise in manner and form as the said *R. L.* hath within complained against him. And they assess the damage of the said *R. L.* by reason thereof besides his costs and charges by him laid out about his suit in this behalf to 3 l. 8 s. And for his said costs and charges to 40 s.

John Hawe lessee of *Joshua Tesdale* against *William Burton* and *Mary* his wife.

Trin. 3 Jac. 2. B. R. ro. 1038.

*Postea, Special
verdict in e-
jection. B.R.
Comb. 84.*

Afterwards on the day and at the place within contained before Sir *R. H.* Knight, one of the justices of the lord the king assigned to hold pleas before the king himself, and Sir *T. J.* Knt. one of the Barons of the *Exchequer* of the said lord the king, justices of the said lord the king, assigned to take the assizes in the county of *B.* by form of the statute, &c. comes as well the within named *J. H.* as the within written *W. B.* and *M.* his wife by their attornies within contained. And the jurors of the jury, whereof mention is within made, being demanded, some of them, to wit, *N. P. T. P. R. B. J. F. T. P. R. L. R. W. R. J. T. H. J. P.* and *J. W.* come and are sworn on that jury; and because the

the residue of the jurors of that jury do not appear, Therefore another of the persons standing around hereunto elected by the sheriff of the county aforesaid, is added a-new at the request of the said *J. H.* and by the command of the said justices, whose name is affixed in the panel within written, according to the form of the statute in such case lately made and provided: And the juror so added a-new, *to wit,* *T. E.* being demanded, also comes, who together with the said other jurors first impanelled and sworn, being chosen, tried and sworn to speak the truth of the within contained, Say upon their oath, that one *C. T.* late husband of the said *M.* in his life-time, was seised of and in the tenements within written, with the appurtenances in his demesne as of fee; and being so seised thereof, afterwards, and before the within written time in which it is supposed the trespass and ejectment within written was done, *to wit,* on the 18th day of *October* in the 36th year of the reign of the lord *Charles II.* late king of *England, &c.* made his testament and last will in writing; and that the said *C.* in his life-time then signed, sealed, published and declared that testament before four lawful and credible witnesses, and that that testament was then attested and subscribed by the same four lawful and credible witnesses in the presence of the same *C. to wit,* at *A.* within written, as the law requires. And the said *C.* by his said testament gave

Verdict.
C. T. seised in fee.

Made his will.

Gave to the deft. M. in to tail.

The will.

*Testator
then under 21.*

*Republished at
his full age.*

*In the presence
of 3 witnesses.*

*But the will
not produced,
neither did the
witnesses sub-
scribe their
names,*

*Testator died
seised.
Lessor of pls.
heir of testator.*

*Defendant M.
entered.*

*Married with
the other de-
fendant who
entered in her
rights.*

to the said *M.* the tenements within written amongst others, in special tail, the tenor of which said last will of the said *C.* follows in these words, *In the name of God, &c. [the will in hac verba].* And the said jurors upon their said oath further say, that the said *C.* in his life-time, at the said time of making and publishing his said testament was within the age of 21 years, *to wit,* of the age of 20 years, and not more. *And* that the said *C.* in his life-time afterwards, being of the age of 21 years and more, he a-new published and declared his said testament made as aforesaid, to stand and be his last will in the presence of three legal credible witnesses then there present, as the law requires, *to wit,* at the parish within written; but the testament of the said *C.* was not then produced before the same witnesses, neither did the same witnesses then and there subscribe their names to the testification and publication of the same: And that afterwards the said *C.* died, being seised of the same tenements as aforesaid. *And* the said jury upon their said oath further say, that the within named *J. T.* is cousin and heir of the said *C.* *And* the said jury upon their said oath further say, that the said *M.* now defendant was wife of the said *C.* in his life-time, after whose death she entered into the within written tenements, and was seised thereof, as the law requires. *And* afterwards the said *M.* was joined in wedlock with the said *W. B.* and afterwards

wards the said *W.* entered into the within written tenements with the appurtenances, and was seised thereof in the right of the said *M.* as the law requires. *And the said Lessor of the W. and M. so seised, and afterwards and* *plt. entered.* before the within written time in which, &c. the said *J. T.* entered into the tenements within written, with the appurtenances, and was seised thereof, as the law requires. And being so seised thereof, *Leases to the plaintiff.* the said *J.* afterwards, *to wit,* on the within written 1st day of *October* in the 2d year of the reign of the lord *James II.* then king of *England, &c.* at *A.* within written, demised, granted, and to farm let to the said *J. H.* the tenements within written with the appurtenances, To have and to hold the tenements within written with the appurtenances to the said *J. H.* and his assigns from the feast of *St. Michael* the Archangel then last past until the full end and term of 7 years thence next following fully to be complete and ended. By virtue of which said demise the said *Plt. enters.* *J. H.* entered into the within written tenements with the appurtenances, and was possessed thereof, as the law requires, until the said *W. B. and M.* afterwards, *to* *Ejected by defendants.* *wit,* on the said 1st day of *October* in the 2d year abovesaid, at *A.* aforesaid, with force and arms, &c. entered into the tenements within written, with the appurtenances, in and upon the possession of the said *J. H.* thereof, and him the said *J. H.* from his said farm, his said term therein
not

not yet ended, ejected, drove out and amoved, as the said *J. H.* within complains against them. *But whether* upon the whole matter aforesaid above found in form aforesaid, the said *W.* and *M.* are guilty in law of the trespass and ejectment aforesaid or not, the said jurors are intirely ignorant, and pray the advice of the court here. *And if* upon the whole matter aforesaid found in form aforesaid, it shall seem to the court here, that the said *W.* and *M.* are guilty in law of the trespass and ejectment within written, *Then* the said jurors say upon their said oath, that the said *W.* and *M.* are guilty of the said trespass and ejectment, as the said *J. H.* within complains against them: And they assess the damages of the said *J.* on that occasion, besides his costs and charges expended by him about his suit in this behalf to 6 *d.* and for those costs and charges to 40 *s.* *And if* upon the whole matter aforesaid above found in form aforesaid, it shall seem to the court here that the said *W.* and *M.* are not guilty in law of the trespass and ejectment aforesaid, *Then* the said jurors say upon their said oath, that the said *W.* and *M.* are not guilty of the trespass and ejectment aforesaid; as they within in pleading for themselves have alledged.

Replevin.

Replevin.

Thomson.

Hilary 16 George the Second.

Lincolnshire, **R. B.** was summoned to answer Declaration in
to wit, to **S. B. Gent.** in a plea *Replevin.*
wherefore he took the cattle of the said **C. B.**
S. and unjustly detained the same against
sureties and pledges, &c. And whereupon
the said **S.** by **W. P.** his attorney complains,
That the said **R.** on the 2d day of *August*
in the year of our Lord 1742. at *M.* in
the said county in a certain piece of ground
there called the *Lord's Meadows*, took the
cattle, to wit, 3 heifers and 9 steers of the
said **S.** and unjustly detained the same
against sureties and pledges until, &c.
Whereby the said **S.** says that he is preju-
diced and damnified to the value of 50*l.*
and thereupon he brings suit, &c.

And the said **R.** by **J. C.** his attorney *Avowry as*
comes and defends the force and injury when, *lessee for years*
&c. and well avows the taking of the said *for damage-*
cattle in the said place in which, &c. and just- *seasant.*
ly, &c. because he says, that **W. duke of P.**
before the said time when, &c. was seised
of the said piece of ground called the *Lord's*
Meadows in which, &c. with the appurte-
nances in his demesne as of fee: And be-
ing so seised thereof he the said **W. duke**
of **P.** long before the time when, &c. to
wit, on the 1st day of *April* in the year
of our Lord 1740. at *M.* aforesaid demi-
sed the said piece of ground in which, &c.
with the appurtenances to the said **R.** To

have and to hold the same to the said R. from the feast of the Annunciation of the Blessed Virgin Mary then last past, for and during the term of 21 years from thence next ensuing and fully to be complete and ended. By virtue of which said demise thereof the said R. entered into the said demised piece of ground in which, &c. with the appurtenances; And at the same time when, &c. was and still is possessed thereof by virtue of the said demise; and because the said cattle in the said declaration mentioned at the said time when, &c. were in the said piece of ground in which, &c. eating the corn of the said R. there growing, and doing damage there; Therefore he the said R. well avows the taking of the said cattle in the said piece of ground in which, &c. and justly, &c. as a distress for the said damage; And this he is ready to verify: Wherefore he prays judgment and a return of the said cattle, together with his damages, &c. according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

Bar, right of common in the locus in quo, &c. And the said S. says, that by reason of any thing above alledged by the said R. he the said R. ought not to avow the taking of the said cattle in the said place in which, &c. to be just, because he says, that the said place in which, &c. is and from time whereof the memory of man is not to the contrary, hath been parcel of certain grounds called the *Lord's Meadows* in M. aforesaid. And that he the said S. at the said time when, &c. and long before was and

and still is seised in his demesne as of fee of 130 acres of land with the appurtenances in *M.* aforesaid. And the said *S.* and all those whose estate he has in his said 130 acres of land with the appurtenances, from time whereof the memory of man is not to the contrary, have had and used, and have been accustomed, and of right ought to have and use common of pasture in the said piece of ground called the *Lord's Meadow*, whereof, &c. (his and their own land there excepted) for 37 of their commonable neat beasts, couchant and levant on the said 130 acres of land of the said *S.* with the appurtenances every year on and from the 1st day of *August* until and upon the 11th day of *November* then next following as belonging and appertaining to the said 130 acres of land with the appurtenances: And therefore he the said *S.* being so seised of his said 130 acres of land with the appurtenances as aforesaid, on the said 2d day of *August* in which, &c. put the said cattle in the said declaration mentioned, being his own commonable neat beasts, and couchant and levant on his said 130 acres of land with the appurtenances, into the said place in which, &c. parcel, &c. to use his said common of pasture there, which said cattle were there on that occasion until the said *R.* in his own wrong at the said time when, &c. took the said cattle in the said place in which, &c. parcel, &c. and unjustly detained them against sureties and pledges

D d 2

until,

until, &c. as the said S. has above complained against him; And this he is ready to verify: *Wherefore* in as much as the said R. has above acknowledged the taking of the said cattle in the said place in which, &c. parcel, &c. he the said S. prays judgment and his damages by reason of the taking and unjustly detaining thereof, to be adjudged to him, &c.

Replication.

And the said R. says, that by reason of any thing above alledged by the said plea in bar of the said S. to the said avowry of the said R. he ought not to be barred from having his said avowry, because he says, that the said cattle at the said time when, &c. were in the said place in which, &c. by the wrong of the said S. eating the corn of the said R. there growing, and doing damage there, as the said R. hath by his said avowry above alledged; *Without this*, that the said S. and all those whose estate he has in the said 130 acres of land with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and used, and have been accustomed, and of right ought to have and use common of pasture in the said piece of ground called the *Lord's Meadows*, whereof, &c. (his and their own land there excepted) for 37 of their commonable neat beasts couchant and levant on the said 130 acres of land of the said S. with the appurtenances, every year on and from the 1st day of *August* until and upon the 11th day of *November* then next following,

Traverse.

lowing, *As* belonging and appertaining to the said 130 acres of land with the appurtenances, in manner and form as the said *S.* hath by his said plea in bar to the said avowry in that respect above alledged; And this he is ready to verify: *Wherefore*, as before, he prays judgment and a return of the said cattle together with his damages, &c. according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

And the said *S.* says, as before, that the *Rejoinder.*
said *S.* and all those whose estate he has in the said 130 acres of land with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and used, and have been accustomed, and of right ought to have and use common of pasture in the said piece of ground called the *Lord's Meadows*, &c. (his and their own land there excepted) for 37 of their commonable neat beasts, couchant and levant on the said 130 acres of land of the said *S.* with the appurtenances, every year on and from the 1st day of *August* until and upon the 11th day of *November* then next following, *As* belonging and appertaining to the said 130 acres of land with the appurtenances in manner and form as the said *S.* hath by his said plea in bar to the said avowry in that respect above alledged: And this he prays may be inquired of by the country: *And Issue.*
the said *R.* does so likewise. *Therefore* *Venire.*
the sheriff is commanded that he cause to

come here in 8 days of the Purification of the blessed Virgin *Mary*, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Hil. 36 *H.* 6. ro. 466.

*Declaration in
replevin.
Hob. 16.*

Surrey, to wit, Heretofore, as appears in the term of *St. Michael* in the 35th year of the reign of our Lord the present king in the 241 roll it is so contained, *J. A.* was summoned to answer *J. D.* of a plea wherefore he took the cattle of the said *J. D.* and unjustly detained them against gages and pledges, &c. And whereupon the said *J. D.* in his proper person complains, that the said *J. A.* on the last day of *June* in the 34th year of the reign of our said lord the present king at *T.* in a certain place called, &c. took the cattle, to wit, three cows and four bullocks of the said *J. D.* and unjustly detained them against gages and pledges, until, &c. Whereupon he says he is injured and hath damage to the value of 16*l.* And thereupon brings suit, &c. And the said *J. A.* by *W. T.* his attorney comes and defends the force and injury when, &c. And prays leave of imparling thereupon here, until from the day of *St. Hilary* in 15 days, and has, &c. By the assent of the said *J. D.* the same day is given to him the said *J. D.* and here, &c.

Imparlance.

And now here at this same 15th day of *St. Hilary* comes as well the said *J. D.* in his proper person, as the said *J. A.* by
his

his attorney aforesaid: Whereupon the said plea being seen, read and understood, *Judgment for a Return. habend. because no mention in the declaration* *because in the said declaration there was no mention in what place the said cattle were taken,* it seems to the said justices, that a due avowry being first made by the said *J. A.* for having a return of the said cattle, then the said *J.* for the insufficiency of the said declaration, ought to have a return of the said cattle, *in what place the cattle were taken.* *And upon this the said J. A. for having a return of the said cattle, well* *Avowry pro return. habend.* avows the taking the said cattle in the town aforesaid, in a certain place called the *Vicar's Land*; and justly, *Ec.* because he says, that one *J. C.* vicar of the church of *St. M.* in *T.* long before the time in which the said taking is supposed to be done, was seised of two acres of land with the appurtenances in *T.* aforesaid, whereof the said place, in which, *Ec.* is parcel, as glebe of the said church in his demesne as of fee, in right of the same church, and being so seised thereof long before the taking, *Ec.* demised to the said *W. A.* the said two acres of land, to have from the same day by five years thence next following [which *W.* demised over to the defendant, and so avows for damage-feasant] And prays a return of the said cattle, *Ec.* Therefore it is granted that the said *J. A.* have a return of the said cattle, *Ec.* And the said *J. D.* in mercy, *Ec.*

*In the County Court of Middlesex held the
2d day of August in the 18th year of
King George the Second.*

*Decl. in reple-
vin in the
county court.
Co. Ent. 314.
b.*

*In the county court } J. F. was summoned
of Mid. to wit, } J. to answer to J. C.
in a plea wherefore he took the goods
and chattels of the said J. C. and them
unjustly detained against sureties and
pledges, &c. Whereupon the said J. C.
by S. T. his attorney complains, that
the said J. F. on the 3d day of July in
the 18th year of the reign of our sovereign
lord George the 2d, now king of Great
Britain, at the parish of St. Giles in the
Fields in the said county of Middlesex, at
a certain place there called and known
by the name of Little St. Andrew Street
in the county aforesaid, in a certain mes-
suage situate in the said street and then in
the possession of the said J. C. and within
the jurisdiction of this court, did take the
goods and chattels of the said J. C. that is
to say, two looking-glasses in gilt frames,
two brass arms and six chairs, and them
unjustly detained against sureties and
pledges, &c. Wherefore the said J. C. saith
that he is injured and hath received da-
mage to the value of * 10*l*. And there-
upon he brings this suit, &c.*

* N. B. In replevin by plaint, the sheriff may hold
plea in his county court, although the value be of 20*l*.
or above, by force of the statute of *Marlebridge*. 2 Inst.
129, 312.

Pledges to prosecute { John Doe,
and
Richard Roe.

London, to wit, J. S. late, &c. was summoned to answer to B. B. of a plea why he took the goods and chattels of the said B. and them unjustly detained against sureties and pledges, until, &c. And whereupon the said B. by W. S. his attorney complains, that the said J. the 29th day of August in the 7th year of the reign of our lord the king, who now is, &c. at L. aforesaid, that is to say in the parish of Christ-Church in the ward of Farringdon-Within, in a certain place there called the kitchen part of the dwelling-house of the said B. in the parish and ward aforesaid, took the goods and chattels, that is to say, two watches of the said B. and them unjustly detained against sureties and pledges until, &c. Whereupon he saith, that he is damnified and hath sustained damages to the value of 40*l*. And thereupon he brings this suit, &c.

And the said J. C. by S. L. his attorney comes and defends the force and injury when, &c. And as bailiff of T. D. well acknowledges the taking of the said goods, chattels and cattle in the said places in which, &c. And justly, &c. because he says that J. F. long before the said time when, &c. was seised of the said places in which, &c. with the appurtenances, in his demesne as of fee, and being

Cognizance as
bailiff.

J. F. seised in
fee.

By indenture

Profert.

Grants a yearly rent,

issuing out of the locus in quo, &c.

To W. L. and M. his wife, and the heirs of the body of M. to be begotten by W.

With power of distress.

so seised thereof, he the said *J. F.* by an indenture made at the parish of *Kingsnorton* aforesaid, on the 30th day of *August* in the 15th year of the reign of the late king *Charles I.* between the said *J. F.* of the one part, and *W. L.* and *M.* his wife, by the name of *M. F.* daughter of the said *J. F.* of the other part, one part of which said indenture, sealed with the seal of the said *J. F.* the said *J. C.* brings here into court, bearing date the same day and year, for and in consideration of the marriage then had between the said *W.* and *M.* and to and for some maintenance and livelihood to be provided and assured to and for the said *W.* and *M.* by the said *J. F.* in satisfaction of part of the marriage portion of the said *M.* did for himself and his heirs give and grant to the said *W. L.* and *M.* his wife, one annual or yearly rent of 4*l.* of lawful money of *England*, yearly issuing, payable, and going forth of the said places in which, &c. (among other things) To have, hold, receive, take and enjoy the said annual or yearly rent of 4*l.* of lawful money of *England*, unto the aforesaid *W. L.* and *M.* his wife, and the heirs of the body of the said *M.* by the said *W. L.* lawfully to be begotten for ever, to be paid at the feasts of *St. Michael* the archangel, and the annunciation of the blessed virgin *St. Mary*, by even portions. And the said *J. F.* did grant for himself and his heirs, by the said indenture, that if it should happen that the

the said annual rent of 4*l.* or any part thereof, to be in arrear and unpaid by the space of 21 days next after any of the said feasts (being lawfully demanded) then it should be lawful for the said *W. L.* and *M.* and either of them, and the heirs of the body of the said *M.* by the said *W. L.* lawfully begotten, and every of them, into the said places in which, &c. (among other lands) and every part and parcel thereof to enter and distrain, and the distress and distresses then and there found to lead, drive, chase, and carry away, and the same to impound, withhold, detain and keep until the same annual rent of 4*l.* and every part thereof, with the arrearages, be fully satisfied and paid, as by the said indenture more fully appears.

By virtue of which said grant thereof *W. L. and* they the said *W. L.* and *M.* his wife be- *M. his wife,*
came seised of the said yearly rent of 4*l.* *seised of the*
in their demesne as of fee-tail, to wit, to *rent in fee-tail.*
them and the heirs of the body of the said
M. by the said *W. L.* And being so seised *W. L. and M.*
thereof, he the said *W. L.* afterwards, to *leave issue*
wit, on the 1st day of *June* in the year *only M. their*
of our Lord 1681, at the parish of *Kings-*
norton aforesaid died, leaving issue of his
body, on the body of the said *M.* his wife
begotten, *M. L.* their daughter, and no
other issue; and the said *M.* survived him,
and became sole seised of the said yearly
rent, for and during the term of her na-
tural life, the remainder thereof belong-
ing to the said *M.* and the heirs of her
body.

body. And being so seised thereof she, the said *M.* afterwards, to wit, on the 1st day of *May* in the year of our Lord 1695, at the parish of *Kingsnorton* aforesaid died seised of her said estate therein.

M. the daughter seised of the rent in tail.

Upon whose death the said *M.* her only daughter and heir, became seised of the said yearly rent of 4*l.* in her demesne as of fee-tail, to wit, to her and the heirs of her body. And being so seised thereof, she

Marries E. J.

the said *M.* afterwards, to wit, on the 15th day of *June* in the year of our Lord 1690, at the same parish took to her husband *E. J.* by reason whereof they the said *E. J.* and *M.* his wife, in the right of the said *M.* became seised of the said yearly rent of 4*l.* in their demesne as of fee-tail, to wit, to them and the heirs of the body of the said *M.* And being

Leaves issue M. her daughter.

so seised thereof, she the said *M.* afterwards, to wit, on the first day of *June* in the year of our lord 1703, at the same parish died, leaving issue of her body by the said *E. M. J.* her daughter and heir, and so seised of her said estate in the said yearly rent of 4*l.* Upon whose death the said *E. J.* became seised of the said yearly rent of 4*l.* in his demesne as of free-hold, for the term of his life, as tenant thereof by the law of *England*; and afterwards, to wit, on the 10th day of *October* 1706, at the parish of *Kingsnorton* aforesaid the said *E.* died. Upon whose death the said *M. J.* her daughter and sole heir, became seised of the said yearly rent of 4*l.*

E. S. becomes tenant by the curtesy and dies. M. the daughter becomes seised, &c.

in her demesne as of fee-tail, to wit, to her and the heirs of her body. *And being* *Marris J. D.* so seised thereof, she the said *M.* afterwards, to wit, on the 20th day of *October* in the year last aforesaid, at the same parish took to her husband *J. D.* And thereupon the said *J. D.* and *M.* his wife, in right of the same *M.* became seised of the said yearly rent of 4*l.* in their demesne as of fee-tail, to wit, to them and the heirs of the body of the said *M.* And being so seised thereof, he the said *J. D.* *Who dies.* afterwards, to wit, on the 1st day of *April* in the year of our lord 1709, at the same parish died, and the said *M.* his wife survived him, and became sole seised of the said yearly rent of 4*l.* in her demesne as of fee-tail, to wit, to her and the heirs of her body. *And being so seised thereof,* *She marries* she the said *M.* afterwards, to wit, on *W. B.* the 1st day of *September* in the same year, at the same parish took to her husband *W. B.* Whereupon they the said *W. B.* and *M.* his wife became seised in the right of the said *M.* of the said yearly rent of 4*l.* in their demesne as of fee-tail, to wit, to them and the heirs of the body of the said *M.* *And being so seised thereof,* *A fine levied.* afterwards, to wit, in the term of *St. Hilary* the 8th year of the reign of the late queen *Anne*, a certain fine levied itself in the court of the said late queen of the bench here, to wit, at *Westminster*, before *T. T. J. B. R. F. and R. D.* then justices and other faithful subjects of the said late queen

*Between S. P.
plaintiff and
the said W. B.
and M. De-
forceants.*

queen then and there present, between S. P. spinster plaintiff, and the said W. B. and M. his wife deforceants, of the said yearly rent of 4*l.* by the name of the annual rent of 80*s.* issuing of and from one messuage, 20 acres of land, 10 acres of meadow, and 20 acres of pasture, with the appurtenances in *Kingsnorton* aforesaid. Whereupon a certain plea of covenant was summoned between them in the same court, to wit, that the said W. and M. acknowledged the said rent to belong to her the said S. as that which the said S. had of the gift of the said W. and M. and they remised and quit-claimed the same from the said W. and M. and their heirs, to the said S. and her heirs for ever. And moreover the said W. for himself and his heirs, did grant that he would warrant to the said S. and her heirs, the said rent against the said W. and his heirs for ever. And likewise the said W. and M. acknowledged for themselves and the heirs of the said M. that they would warrant to the said S. and her heirs the said rent against the said W. and M. and the heirs of the said M. for ever. And for this acknowledgment, remission, quit-claim, warrant, fine, and concord, the same S. did give to the said W. and M. 60*l.* sterling; As by the record of the said fine remaining in the court of our lord the now king of the bench here, to wit, at *Westminster* aforesaid, manifestly appears. Which said fine, so had and levied as aforesaid, was had and levied to

*The fine levied
to the use of
the said S. P.
in fee.*

and for the only proper use and behoof of the said S. her heirs and assigns for ever. *Whereupon* the said S. became seised of the S. P. *seised in* said yearly rent of 4*l.* in her demesne as *fee.* of fee; *And* being so seised thereof, she *Who by will* the said S. afterwards, to wit, on the 11th *devises it to* day of *February* in the year of our Lord H. D. in *fee.* 1730, at the parish of *Kingsnorton* afore-said made her last will and testament in writing, and thereby gave and devised the said yearly rent of 4*l.* to H. D. and his heirs for ever. *And* afterwards, to wit, on the same day and year, at the same parish, she, the said S. died so seised of her said estate therein. *Upon* whose death H. D. *seised* the said H. became seised of the said year- *of the rent in* ly rent of 4*l.* in his demesne as of fee, by *fee.* virtue of the said devise thereof. *And* being so seised thereof, he the said H. afterwards, to wit, on the first day of *March* in the year of our Lord 1735, at the same parish died seised of the said yearly rent of 4*l.* in his demesne as of fee. *Upon* whose death the said yearly rent of 4*l.* de- *It descends to* scended to the said T. D. his brother and *T. D. as his* heir. *By* virtue of which said descent *heir.* thereof, he the said T. D. became seised, *T. D. seised* and still is seised of the said yearly rent *in fee.* of 4*l.* in his demesne as of fee. *And* be- *For rent ar-* cause 10*l.* of the said yearly rent for two *rear makes* years and a half, ending on the feast of *cognizance as* the annunciation of the blessed virgin Ma- *bailiff of the* *said T. D.* ry in the year of our Lord 1742, on that feast were due and in arrear to the said T. D. and (although lawfully demanded) at

at the said time when, &c. being after the end of 21 days next after that feast, remained in arrear and unpaid; therefore the said J. C. as bailiff of the said T. D. well acknowledges the taking of the said goods, cattle and chattels, in the said places in which, &c. and justly, &c. as a distress for the said arrears of the said yearly rent; And this he is ready to verify: Wherefore he prays judgment, and a return of the said goods, cattle and chattels, together with his damages, &c. according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

*Bar, that the
fine was le-
vied to the
use of M. B.*

Traverse.

And the said J. L. saith, that the said J. C. for any thing by him above alledged in pleading, as bailiff of the said T. D. ought not to acknowledge the said taking the said goods, cattle and chattels in the said places in which, &c. to be just, because he saith, that the said fine so had and levied as aforesaid was had and levied to and for the only proper use and behoof of the said M. B. and her heirs; *Without this*, that the said fine so had and levied as aforesaid was had and levied to and for the only proper use and behoof of the said S. P. her heirs and assigns, as the said J. C. by his said cognizance hath above alledged; And this the said J. L. is ready to verify: Whereupon since the said J. C. above acknowledges the said taking of the said goods, cattle and chattels, the said J. L. prays judgment, and his dama-

ges on occasion of the said taking and unjust detention of the said goods, cattle and chattels, to be adjudged to him, &c.

And the said J. C. says, as before, that the said fine so had and levied as aforesaid, was had and levied to and for the only use and behoof of the said S. P. her heirs and assigns, as the said J. C. by his cognizance has above alledged; And hereupon he puts himself upon the country: And the said J. L. does so likewise: Therefore the sheriff is commanded that he cause to come here in three weeks from the day of the holy Trinity, &c. By whom, &c. And who neither, &c. To recognize, &c. Because as well, &c.

And the said J. S. by J. B. his attorney comes and defends the force and injury, when, &c. and as church-warden of the said parish of Christ-Christ in the ward aforesaid, according to the form of the statute, &c. well avows the taking of the said goods and chattels in the said place in which, &c. because he saith, that at the said time when, &c. he the said J. S. was church-warden of the said parish of Christ-Church in the ward aforesaid; And that he the said J. S. as church-warden as aforesaid at the time, &c. took the said goods and chattels in the said place in which, &c. in the name of a distress, by authority and according to the tenor, purport and effect of a certain statute, made in a parliament of our late sovereign lady Elizabeth, queen of England, &c.

holden at *Westminster* in the county of *Middlesex*, in the 43d year of her reign, and as church-warden, &c. by virtue of the said statute well avows the said taking, &c. in the name of a distress, and justly, &c. And this he is ready to verify: Wherefore he prays judgment, and that a return of the said goods and chattels, together with his damages, according to the statute, may be adjudged to him, &c.

Replication.

And the said *B.* says, that the said *J. S.* for the reason before alledged, ought not to well avow the taking the said goods and chattels in the said place in which, &c. because he says that the said *J. S.* of his own proper injury, and without any such cause by him above mentioned in his avowry, took the said goods and chattels of him the said *B.* in the said place in which, &c. and them unjustly detained against sureties and pledges, &c. in the manner and form as he the said *B.* above against him complains: And he demands that this may be inquired of by the country: And the said *J. S.* doth the like.

Recordari
facias loque-
lam.

Duty
Curfitor

GEORGE the Second, by the grace of God, of *Great Britain, France and Ireland* king, defender of the faith, &c. To the sheriff of *Essex*, greeting: We command you that in your full county you cause the plaint to be recorded, which is the same county, without our writ, between *R. K.* and *J. W.* and *W. S.* of the cattle, goods and chattels of the said *R.* taken and unjustly detained, as it is said, and that

that you have the said record before our justices at *Westminster* from *Easter-Day* in 15 days, under your seal and the seals of four lawful knights of the same county of such as shall be present at the said record, and that you prefix the same day to the parties that then they may be there ready to proceed in the said plaint as shall be just; And have you there the names of the said four knights and this writ. Witness ourself at *Westminster* the 6th day of *March* in the 14th year of our reign. Let execution be done of this writ if the said R. desire it, otherwise not.

Browne.

By virtue of this writ to me directed in *The return.* my full county court held for the county of *Essex* at *Chelmsford* in the county aforesaid, the 31st day of *March* in the year within mentioned, I caused the plaint between the parties within named to be recorded, and have that record ready before the justices of our lord the king at *Westminster*, at the day within mentioned, under my seal and the seals of R. C. C. T. H. B. and S. B. four lawful knights of the same county, who were present at the recording the said plaint, and I have prefixed the same day to the said parties, that they be then before the said justices of our sovereign lord the king at *Westminster*, to proceed therein according to justice, as by the said writ I am commanded.

The rest of the execution of this writ appears in a certain schedule to the said writ annexed.

The answer of *J. H. Esq;* sheriff.

Essex, to wit,

At my county court held at *Chelmsford* in the county aforesaid, the 5th day of *February* in the year of our Lord 1739, (among other things) it is thus recorded:

R. K. complains of *J. W.* and *W. S.* of a plea of taking and unjustly detaining of his cattle, goods and chattels, &c.

J. M. of *Hosier-lane, London*,
 Pledges to } watch-spring maker,
 prosecute } *J. B.* of *S.* in the county of
Essex, gardiner.

T. B. Esq; sheriff.

Pone in Replevin.

GEORGE the Second, by the grace of God, of *Great Britain, France and Ireland* king, defender of the faith, &c. To the sheriff of *Essex* greeting: Put by sureties and safe pledges *J. W.* and *W. S.* that they be before our justices at *Westminster* from the day of the holy *Trinity* in three weeks, to answer to *R. K.* of a plea, wherefore they took the cattle, goods and chattels of the said *R.* and them unjustly detained, against gages and pledges as he saith, and to shew wherefore they have not appeared in our court before our justices at *Westminster* from *Easter-Day* in 15 days last past, as the day prefixed to them; And have you there the names of the pledges and this writ. Witness Sir *John Willes*,

Replevin.

421

Willes, Knt. at *Westminster*, the 29th day of *May* in the 14th year of our reign.

Bycott.

6 June 1741.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Filing <i>Re. fa. lo.</i> with filacer	—	0	1 0
Rule to appear	—	0	1 4
<i>Pone</i> and duty	—	0	3 6

GEORGE the Second, by the grace *Writ of false* of God, of *Great Britain, France and Ire-judgment.*

land king, defender of the faith, &c. To

the sheriff of *Middlesex* greeting: If *J. F.*

shall give you security that his suit shall

be prosecuted, then in your full county

cause the plaint to be recorded which is

in the same county, without our writ, be-

tween *J. C.* and *J. F.* of the goods and

chattels of the said *J. C.* taken and un-

justly detained, as it is said, wherein the

said *J. F.* complaineth that false judgment

hath been given against him in the said

county, and that you have the said record

before our justices at *Westminster* on the

octave of *St. Hilary*, under your seal and

the seals of four lawful knights of the

same county, of such as shall be present

at the said record, and summon by good

summoners the said *J. C.* that he be then

there to hear the said record; And have

you there the summons, the names of the

said four knights, and this writ. Witness

ourselves at *Westminster*, the 17th day of

December in the 18th year of our reign.

Burgh.

E e 3

By

	<i>s.</i>	<i>d.</i>
<i>Carfitor</i>	2	6
<i>Duty</i>	1	6
<i>Fine</i>	6	8
	10	8

Scire Facias.

By the Lord Chancellor of *Great Britain*, at the instance of the demandant.

s. d.

Received vi. viii.

S. Hetherington.

Scire facias.

Cooke.

Trinity Term in the 10th year of king George the Second.

Scire facias
by an admini-
strator de bo-
nis against
beir at law
and tertenants.

London, } I T was commanded to the
to wit, } sheriffs of *London*, Where-
as *T. M.* lately in the
court of the lord *James II.* late king of
England, (that is to say) in the term
of the holy *Trinity* in the 2d year of his
reign, before Sir *H. B. Knt.* and his com-
panions, then justices of the said late king
of the Common Bench at *Westminster*, by
the judgment of the same court had recovered
against *T. T.* late of the parish of *St. Andrew Holborn* in the county of *Middlesex*, Esq; as well a debt of 500 *l.* as 90 *s.*
which were adjudged in the same court to
the said *T. M.* for his damages which he
had sustained by reason of the detaining of
that debt, whereof he is convicted, as by
the record and proceedings thereof now
remaining in the said court of our present
sovereign lord the king, before his justices
at *Westminster* aforesaid, manifestly ap-
pears; Nevertheless execution of the judg-
ment

ment aforesaid still remains to be made; And as well the said *T. M.* as the said *T. T.* are dead since the recovering the said judgment, as our said present sovereign lord the king hath received information by *W. S.* administrator of the goods and chattels which were of the said *T. M.* at the time of his death not administered by *A.* late wife of him the said *W. S.* deceased, and *T. M.* her sister, also deceased, late executrixes of the testament of the said *T. M.* And his said now majesty being willing, &c. that by good and lawful men they should warn *W. T.* cousin and heir of the said *T. T.* deceased, and the tenants of all the lands and tenements which were of the said *T. T.* on the morrow of the holy *Trinity* in the said 2d year of the said late king *James II.* (on which day the judgment aforesaid was given) or at any time afterwards in their bailiwick, that they should be here at this day (that is to say) from the day of *St. Michael* in three weeks, to shew if they have or know of any thing, &c. why the said *W. S.* should not have execution of the debt and damages aforesaid, to be levied of those lands and tenements, according to the form and effect of the recovery aforesaid, &c. If, &c. And now here at this day comes as well the said *W. S.* by *T. B.* his attorney, as *J. T.* Esq; by *C. W.* his attorney; and the said *W. T.* although on the fourth day of the plea aforesaid he was solemnly demanded, came not; And the sheriffs, to

The return.

wit, *W. R.* and *B. R.* Esqs; now return, that by virtue of the said writ to them directed, by *J. C.* and *R. R.* good and lawful men of their bailiwick, they had warned the said *W. T.* cousin and heir of the said *T. T.* and the said *J. T.* Esq; the tenant of 18 messuages with the appurtenances in the parish of *St. Andrew Holborn* in their bailiwick (*to wit*) one of them with the appurtenances then or late in the tenure or occupation of *E. M.* or her assigns [*the other 17 messuages described in like manner*] which were the lands and tenements of the said *T. T.* on the day of giving the judgment aforesaid, that they be here on this day (*to wit*) from the day of *St. Michael* in three weeks, to shew as the writ doth require; And the said sheriffs did certify that there were no other tenants, nor was there any other tenant of any other lands or tenements which were his the said *T. T.*'s on the day of giving the judgment aforesaid, or at any time after, in their bailiwick, whom they could warn: And hereupon the said *W. S.* says, that administration of all the goods and chattels which were of the said *T. M.* at the time of his death not administered by the said *A.* deceased, late wife of the said *W. S.* and the said *T. M.* deceased, the executrixes of the testament of the said *T. M.* after the deaths of the said *A.* and *T.* (*to wit*) on the 9th day of *August* in the 10th year of the reign of our late sovereign lord king *George I.* at *London*, in
the

Letters of administration.

the parish of *St. Mary le Bow* in the ward of *Cheap*, was committed by *W.* by Divine Providence archbishop of *C.* primate of all *England* and metropolitan, to him the said *W. S.* and he produces here in ^{Profert.} court the letters of administration of the said archbishop, with the testament of the said *T. M.* annexed, which testifies the commitment of the administration aforesaid to him in form aforesaid, and he prays execution of the debt and damages aforesaid against the said *W. T.* to be levied of the lands and tenements which were of the said *T. T.*'s at the aforesaid time of giving the judgment aforesaid, or at any time since, and which descended from the said *T. T.* to the said *W. T.* as his cousin and heir, by his default, and also against the said *T. T.* to be levied of the messuages aforesaid, with the appurtenances, whereof he is returned tenant as aforesaid, to be adjudged to him the said *W. S.*

And the said *J. T.* by *C. W.* his attorney comes and says, that the said *W. S.* ^{Double plea of tertenant,} ought not to have execution of the debt and damages aforesaid, against him the said *J. T.* to be levied of the tenements aforesaid, of which he is above returned tenant, because he says that all the money due upon the said judgment in the said writ mentioned was paid and satisfied ^{That the money on the judgment was paid.} by the said *T. T.* to the said *T. M.* in the same writ named, to wit, at *London*, in the parish of *St. Mary le Bow* in the ward of *Cheap*; And this he is ready to verify:
Wherefore

*And that the
def. in the
original
judgment
was not seised
in fee of the
messuage, &c.
in the writ of
Scire facias.*

Wherefore he prays judgment if the said *W. S.* ought to have execution against the said *J. T.* of the debt and damages aforesaid, to be levied of the tenements aforesaid, of which he is above returned tenant; And the said *J. T.* by force of the statute in that case made and provided, and by leave of the court here granted to him, for a further plea saith, that the said *W. S.* ought not to have execution of the debt and damages aforesaid against the said *J. T.* to be levied of the tenements aforesaid, of which he is above returned tenant as aforesaid, because he saith, that the said *J. T.* on the day when the said judgment in the said writ named was given or ever after, was not seised of the tenements aforesaid, of which the said *J. T.* is above returned tenant, or of any part thereof, in his demesne as of fee; And this he is ready to verifify: Wherefore he prays judgment if the said *W. S.* ought to have execution against him of the debt and damages aforesaid, to be levied of the said tenements, of which he is above returned tenant as aforesaid, &c.

G. Eyre.

Replication.

And the said *W. S.* saith, that he by any thing by the said *J. T.* above in pleading alleged ought not to be barred from having execution of the debt and damages aforesaid against the said *J. T.* to be levied of the tenements aforesaid, with the appurtenances, of which he is returned tenant as aforesaid; Because

Because as to the plea of the said *J. T.* first ^{To the first} above pleaded, he the said *W. S.* saith, that ^{part, that the} all the money due upon the said judgment ^{money was not} in the said writ mentioned was not paid or ^{paid.} satisfied by the said *T. T.* to the said *T. M.* in the said writ named, as the said *J. T.* hath above in pleading alledged: And this he prayeth may be inquired by the country: And the said *J. T.* doth likewise the same. ^{Issue thereon.} And as to the plea of the said *J. T.* last ^{To the second} above pleaded, he the said *W. S.* saith, ^{part.} that before the said day when the said judgment was given, ^{to wit,} on the 10th ^{That the de-} day of *January* in the year of our Lord ^{endant in the} 1685. the said *T. T.* was seised of the te- ^{judgment was} nements aforesaid with the appurtenances, ^{seised in fee.} of which the said *J. T.* is above returned tenant, in his demesne as of fee; and being so seised on the 1st day of *April* in the ^{And did by} 2d year of the reign of our Lord *James* ^{lease} II. late king of *England, &c.* by one indenture made at the parish of *St. Andrew Holborn* aforesaid, between the said *T. T.* Esq; *R. A. T. A. E. C.* and *T. T.* Gent. by their respective names of *T. T.* of the parish of *St. Andrew Holborn, London, Esq;* *R. A.* of *Newport Pagnel* in the county of *Bucks,* Esq; *T. A.* of *Bedwil Park* in the county of *Hertford,* Esq; *E. C.* of *Gray's Inn* in the county of *Middlesex,* Esq; and *T. T.* of the parish of *St. Andrew Holborn, London, Gent.* and *E. B.* and *J. W.* by their respective names of *E. B.* of *Lincoln's Inn* in the county of *Middlesex,* Esq; and *J. W.* of *Gray's Inn* aforesaid, of the other part, one

Profert.

one part of which indenture sealed with the seals of the said *T. T. Esq;* *R. A. T. A. E. C.* and *T. T. Gent.* he the said *W. S.* bringeth here into court, the date whereof is the same day and year last above mentioned, he the said *T. T. Esq;* for and in consideration of a certain sum of money to him the said *T. T. Esq;* by the said *E. B.* and *J. W.* in hand paid, did bargain and sell; And they the said *R. A. T. A. E. C.* and *T. T. Gent.* did ratify and confirm the tenements aforesaid, whereof the said *J. T.* is returned tenant as aforesaid with the appurtenances, together with other lands unto the said *E. B.* and *J. W.* To have and to hold unto the said *E. B.* and *J. W.* their executors, administrators and assigns, from the day next before the day of the date of the said indenture unto the end and term of one year then next following and fully to be complete and ended, as by the said indenture more fully doth appear: By virtue of which bargain and sale, and by force of the statute for transferring of uses into possession made at *Westminster* in the county of *Middlesex*, on the 4th day of *February* in the 27th year of the reign of the lord *Henry VIII.* late king of *England*, &c. the said *E.* and *B.* and *J. W.* were possessed of the tenements aforesaid, whereof the said *J. T.* is so returned tenant, with the appurtenances, for the said term of one year. And the said *E. B.* and *J. W.* being so possessed thereof, And the said *T. T. Esq;*

Esq; being so seised of the reversion there-
of in his demesne as of fee, afterwards,
to wit, on the 2d day of *April* in the 2d
year of the reign of the said lord *James* And release
II. late king of *England, &c.* by one in-
denture *quadrupartite* made at the said pa-
rish of *St. Andrew Holborn*, between the
said *T. T. Esq; R. A. T. A. E. C. and T. T.*
Gent. by their respective names of *T. T.*
of the parish of *St. Andrew Holborn, Lon-*
don, Esq; R. A. of Newport Pagnel in the
county of Bucks, T. A. of Bedwel Park in
the county of Hertford, Esq; E. C. of Gray's
Inn in the county of Middlesex, Esq; and
T. T. of the parish of St. Andrew Holborn,
London, Gent. of the first part, the said
E. B. and J. W. by their respective names
of *E. B. of Lincoln's Inn in the county of*
Middlesex, Esq; and J. W. of Gray's Inn
aforesaid, Esq; of the second part, E. F.
and G. L. by their respective names of
E. F. of Gray's Inn aforesaid, Esq; and
G. L. of the Inner Temple, London, Esq; of
the third part, and W. F. by the name of
W. F. of Hatton Garden in the said county
of Middlesex, Esq; of the fourth part,
one part of which indenture sealed with *Profert.*
the seals of the said *T. T. Esq; R. A. T. A.*
E. C. and T. T. Gent. he the said *W. S.*
bringeth here into court, the date where-
of is the same day and year last above
mentioned, he the said *T. T. Esq; did grant, Convey.*
and they the said *R. A. T. A. E. C. and*
T. T. Gent. the reversion of the tenements
aforesaid, whereof the said *J. T.* is so re-
turned

To make a tenant to the Præcipe, in order to suffer a common recovery.

The uses thereof declared.

turned tenant, with the appurtenances, together with other lands, to the said *E. B.* and *J. W.* and their heirs: To have and to hold unto the said *E. B.* and *J.* their heirs and assigns for ever, to the use of them, their heirs and assigns for ever; To the intent they might become perfect tenants of the freehold of the tenements aforesaid, in order and to the intent that a common recovery thereof might be had and suffered in manner and form in the same indenture specified: And it was declared by the same indenture, that the said recovery so to be had and suffered, and all and every other recovery or recoveries, conveyances and assurances whatsoever before that time had, levied, suffered or executed, or thereafter to be had, levied, suffered or executed of the tenements aforesaid, whereof the said *J. T.* is returned tenant, with the appurtenances, or any of them, by or between the said parties to the same indenture or any of them, should be and enure, and are by the same indenture declared to be and enure to the use of Sir *R. A.* and *J. B.* of the county of *Cambridge*, Esq; and their heirs, during the joint lives of the said *T. T.* Esq; and *E.* his wife, and from and after the determination of that estate, to the use of the said Sir *R. A.* and *J. B.* and their heirs, for and during the lives of the said *T. T.* Esq; and *E.* his wife, and the life of the longer liver of them, and from and after the decease of the said *T. T.* Esq; and *E.* his wife, and of the survivor

of them, that then they the said *R. A.* and *J. B.* and their heirs and assigns should stand and be seised of the tenements aforesaid with the appurtenances, to the use of the first son of the body of the said *T. T.* Esq; on the body of the said *E.* begotten, and of the heirs male of the body of such first son issuing; and for default of such issue, then to the use of the second, third, fourth, fifth, sixth, seventh, and all and every other son and sons of the body of the said *T. T.* Esq; on the body of the said *E.* begotten, severally, successively, and in remainder, one after another, as they should be in priority of birth, and of the heirs male of the body and bodies of every such son and sons issuing; the elder of such sons and the heirs male of his body issuing to take before the younger of such sons and the heirs male of his body issuing; And for default of such issue, to the use of the said Sir *R. A.* and *J. B.* their executors, administrators and assigns for the term of 500 years, without impeachment of waste, in which indenture is contained a proviso, that if the said *T. T.* Esq; should happen to die without any issue female of his body on the body of the said *E.* begotten, or without leaving the said *E.* with child of one or more daughter or daughters that should be born alive; that then the estate so limited to the said Sir *R. A.* and *J. B.* for 500 years, should cease, determine, and be utterly void, as by the said indenture, amongst other things, more fully doth

*Recovery.**Writ of entry.*

doth appear. By virtue whereof the said *E. B.* and *J. W.* were seised of the tenements aforesaid, whereof the said *J. T.* is so returned tenant, with the appurtenances, in their demesne as of fee; And being so seised, afterwards pursuant to the said indenture quadripartite, to wit, on the 12th day of *February* in the 2d year of the reign of the said lord *James II.* late king of *England*, &c. the said *E. F.* and *G. L.* prosecuted out of the court of the said late king *James II.* of his Chancery at *Westminster* aforesaid, a certain writ of the said late king of entry upon a disseisin in the post against the said *E. B.* and *J. W.* then tenants of the freehold of 60 messuages with the appurtenances in the parishes of *St. Andrew Holborn* and *St. Dunstan in the West*, of which the tenements aforesaid with the appurtenances, whereof the said *J. T.* is returned tenant as aforesaid, were parcel, to the then sheriffs of *London* directed, by which writ the said late king commanded the said late sheriffs of *London* that they should command the said *E. B.* and *J. W.* that justly and without delay they should render to the said *E. F.* and *G. L.* the said 60 messuages with the appurtenances, which they the said *E. F.* and *G. L.* claimed to be their right and inheritance, and into which they the said *E. B.* and *J. W.* had not then entry, but after a disseisin which *H. H.* thereof unjustly and without judgment had made of them the said *E. F.* and *G. L.* within 30 years then

then last past, as they then said; And whereupon they then complained, that the said *E. B.* and *J. W.* then deforced them there; and unless they did so, and that the said *E. F.* and *G. L.* should make the said then sheriffs secure of prosecuting their claim, then they should summon by good summoners the said *E. B.* and *J. W.* to be before the justices of the said late king here, *to wit*, at *Westminster* aforesaid, from the day of *Easter* in 15 days then next following, to shew wherefore they did not; And that the said then sheriffs should have there the summoners, and that writ: At which said 15th day from the day of *Ea- Parties appear.*
ster, before Sir *H. B.* Knight, and his companions, then justices of the said late king of the bench here, came as well the said *E. F.* and *G. L.* as the said *E. B.* and *J. W.* in their proper persons, and *B. T.* and *T. K.* Knights, then sheriffs of *London* aforesaid, then and there returned the said writ *Writ returned,*
to them in form aforesaid directed, in all things served and executed, *to wit*, that the said *E. F.* and *G. L.* had found to the said sheriffs pledges of prosecuting the said writ, *to wit*, *John Doe* and *Richard Roe*; And that the said *E. B.* and *J. W.* were summoned by *J. D.* and *R. F.* And thereupon the said *Count.*
E. F. and *G. L.* in their proper persons declared against the said *E. B.* and *J. W.* then tenants of the freehold of the said 60 messuages with the appurtenances, of which the tenements aforesaid with the appurtenances, whereof the said *J. T.* is returned tenant as aforesaid, then were parcel, and
Vol. II. F f de.

demanded against the said *E. B.* and *J. W.* the said 60 messuages with the appurtenances, as their right and inheritance, and into which the said *E. B.* and *J. W.* had no entry, but after a disseisin which *H. H.* thereof unjustly and without judgment made of them the said *E. F.* and *G. L.* within 30 years, &c. And whereupon they said, that they were seised of the said 60 messuages with the appurtenances in their demesne as of fee and right in the time of peace in the time of the then lord the king, by taking the profits thereof to the value, &c. And into which, &c. And thereof they then brought their suit, &c. And the said *E. B.* and *J. W.* in their proper persons then came and defended their right, when, &c. And thereupon vouched to warranty the said *T. T.* Esq; who was then likewise present in the same court in his proper person, and did freely warrant to them the said messuages with their appurtenances; And thereupon the said *E. F.* and *G. L.* did demand against him the said *T.* tenant by his warranty the messuages afore said with the appurtenances in form afore said; And whereupon they then said, that they were seised of the messuages afore said with the appurtenances in their demesne as of fee and right, in the time of peace in the time of the then lord the king, by taking the profits thereof to the value, &c. And into which, &c. And thereof they then brought their suit, &c. And the said *T. T.* tenant, by his warranty then

Tenant vouches over.

Count against first vouches.

First vouches vouches over.

then and there defended his right, when,
Ec. And thereupon further vouched to
warranty *J. W.* who was then likewise pre-
sent in the same court in his proper person,
and did freely warrant to him the said
messuages with their appurtenances, *Ec.*
And thereupon the said *E. F.* and *G.* did *Count against*
demand against him the said *J. W.* tenant *common*
by his warranty the messuages aforesaid *vouches.*
with the appurtenances in form aforesaid,
Ec. And whereupon they then said, that
they were seised of the messuages aforesaid,
with the appurtenances, in their demesne as
of fee and right in the time of peace, in the
time of the then lord the king, by taking
the profits thereof to the value, *Ec.* And
into which, *Ec.* And whereupon they then
brought their suit, *Ec.* And the said *J. W.* *Common*
tenant by his warranty then defended his *vouches pleads.*
right, when, *Ec.* And he then said, that
the said *H. H.* did not disseise the said
E. F. and *G.* of the messuages aforesaid,
with the appurtenances, as they the said
E. F. and *G.* by their writ and count a-
foresaid had above supposed: And of this
he then put himself upon the country,
Ec. And the said *E. F.* and *G.* then *Imparlance.*
pray'd leave to imparl thereto, and had
it, *Ec.* And afterwards they the said
E. F. and *G.* came again into the same
court here in that same term in their pro-
per persons: And the said *J. W.* altho' he *Common*
was solemnly demanded, did not return, *vouches makes*
but departed in despite of the court, and *default.*
made default; Therefore it was then and

*Judgment a-
gainst the te-
nant.*

*Against first
vouchee.*

*Against com-
mon vouchee.*

Writ of seisin.

there considered by the same court, that the said *E. F.* and *G.* should recover their seisin against the said *E. B.* and *J. W.* of the messuages aforesaid, with the appurtenances; And that the said *E. B.* and *J. W.* should have of the land of the said *T. T.* to the value, &c. And that the said *T. T.* moreover should have of the land of the said *J. W.* to the value, &c. And that the said *J. W.* should be in mercy, &c. And thereupon the said *E. F.* and *G.* then prayed the writ of the then said lord the king to the then sheriffs of *London* aforesaid to be directed, to make plenary seisin to him of the messuages aforesaid, with the appurtenances; And it was granted to him returnable here, on the morrow of the ascension of our Lord: At which day came here the said *E. F.* and *G.* in their proper persons; And the said then sheriffs of *London*, to wit, *B. T.* and *J. K.* Knts. returned that they, by virtue of that writ to them directed, did on the 1st day of *May* then last past make plenary seisin to them the said *E. F.* and *G. L.* of the messuages aforesaid, with the appurtenances, as by the said writ was commanded to them, &c. As by the said record and process thereof remaining here in court more fully it doth appear. Which recovery, and the execution thereof in form aforesaid had, were had as to the tenements aforesaid, with the appurtenances, whereof the said *J. T.* is returned tenant as aforesaid, to the uses in the said indenture quadripartite herein

herein before specified, and to no other use. And the said *W. S.* further saith, that the said *T. T.* never had any issue male or female of his body on the body of the said *E.* his wife begotten born alive. And the said *W. S.* further saith, that the said *E.* before the day of the suing forth of the aforesaid writ of *Scire facias*, to wit, on the 1st day of *July* in the year of our Lord 1736, at the parish of *St. Andrew Holborn* aforesaid died; And this the said *W. S.* is ready to verify: Wherefore he prays judgment, and his execution of the debt and damages aforesaid against the said *J. T.* of the aforesaid tenements, with the appurtenances, of which he is so returned tenant as aforesaid, to be adjudged to him the said *W. S.* &c.

W. Chapple.

And the said *J. T.* saith, that the replication aforesaid of the said *W. S.* to the plea of the said *J. T.* last above pleaded, and the matter therein contained are not sufficient in law for the said *W. S.* to have execution against the said *J. T.* of the debt and damages aforesaid, to be levied of the said tenements of which he is above returned tenant as aforesaid, to which said replication in manner and form above pleaded the said *J. T.* hath no need nor is he obliged by the law of the land to answer; And this he is ready to verify: Wherefore for want of a sufficient replication in this behalf, the said *J. T.* prays judgment, and that the said *W. S.* may

Demurrer.

be barred from having execution against him of the debt and damages aforesaid to be levied of the said Tenements of which he is above returned tenant as aforesaid, &c.

G. Eyre.

Joinder.

And the said *W. S.* forasmuch as he hath alledged sufficient matter in law in his replication aforesaid to the aforesaid plea of the said *J. T.* last above pleaded, to have execution against the said *J. T.* of the debt and damages aforesaid, to be levied of the aforesaid tenements, whereof he the said *J. T.* is above returned tenant as aforesaid, which he is ready to verify, which said matter the said *J. T.* doth not gainsay, nor in any wise answer thereto, but does wholly refuse to admit the said replication, as before prays judgment and execution against the said *J. T.* of the debt and damages aforesaid, to be levied of the tenements aforesaid, whereof he is above returned tenant as aforesaid, to be adjudged to him.

John Belfield.

To the King's most Excellent Majesty.

The humble memorial of F. earl of E. deputy (with your majesty's approbation) to E. duke of N. earl marshal and hereditary marshal of England,

Sheweth,

A memorial to his majesty for a Scire facias to repeal letters patent.

THAT his late majesty king George I. was graciously pleased by his letters patent, bearing date the 18th day of June in the 6th year of his reign, to constitute and

and appoint *J. W. Esq; Somerset* herald of arms during his good behaviour;

That the said *J. W. Somerset* herald, hath for a course of many years last past absented himself from his duty of attending your majesty and your majesty's late royal father at court and parliament;

That the college of arms have been greatly injured by the said *J. W.*'s receiving fees without doing the duties incumbent on the said office, or accounting and paying his proportion towards the incident charges thereof.

That the said *J. W.* hath likewise presumed to publish the arms of the nobility and gentry of *England* in the margins of maps he hath lately published, without leave of the crown or consent of the officers of arms, whose rights and interests were thereby invaded.

Your memorialist therefore hereby submits the premisses to your majesty's royal consideration, and prays your majesty will be graciously pleased to issue your royal warrant to your majesty's attorney general, thereby authorising and directing him to cause a *Scire facias* to be sued out in your majesty's name, for repealing the said letters patent of the said *J. W. Somerset* herald, for such his misdemeanors and neglect of duty, he being (as your memorialist most humbly conceives)

Scire Facias.

ceives) unworthy to continue longer
in your majesty's service.

*And your memorialist
shall ever pray.*

Effingham M.

Whitehall June 18, 1739.

His majesty is graciously pleased to refer this memorial to Mr. attorney or Mr. solicitor general to consider thereof and report his opinion, what his majesty may fitly do therein. Whereupon his majesty will declare his further pleasure.

Holles Newcastle.

George R.

*Warrant for
a Scire facias
to repeal J.
W.'s patent.*

WHEREAS our right trusty and right well beloved cousin *F.* earl of *Effingham*, Deputy (with our approbation) to our right trusty and right intirely beloved cousin *E.* duke of *N.* earl marshal, and hereditary marshal of *England*, has by his memorial humbly represented unto us, that our late royal Father was graciously pleased by his letters patent, bearing date the 18th day of *June* in the 6th year of his reign, to constitute and appoint *J. W.* Esq; *Somerset* herald of arms, during his good behaviour; That the said *J. W.* has for a course of many years last past absented himself from his duty of attending us and our late royal father at court and parliament; That the college of arms have been greatly injured by the said *J. W.*'s receiving

ing fees without doing the duties incumbent on the said office, or accounting and paying his proportion towards the incident charges thereof; That the said *J. W.* has likewise presumed to publish the arms of the nobility and gentry of *England* in the margins of maps he has lately published, without our leave or consent of the officers of arms, whose rights and interests the memorial states were thereby invaded; the memorialist therefore prays that we would be graciously pleased to issue our royal warrants to you our attorney general, thereby authorising and directing you to cause a *Scire facias* to be sued out in our name for repealing the said letters patent of the said *J. W.* for such his misdemeanors and neglect of duty, and as unworthy to continue longer in our service. And whereas we having referred the said memorial to you or our solicitor general, our said solicitor general by his report thereupon has humbly certified us, That upon receipt of the said memorial he caused notice thereof and a copy to be sent to the said *J. W.* and he has been attended by the solicitor of the memorialist and the said *J. W.* and also by *J. W.* himself, and upon considering the affidavits and arguments on both sides, our said solicitor general is humbly of opinion that the said *J. W.* has been guilty of great neglect of duty, for which he is liable to have a *Scire facias* brought in our name in order to repeal his patent, unless we shall be graciously

ciously pleased to accept of his excuses, and not put him to undergo a trial. But as it may be necessary with regard to many offices where no deputy can be made, and personal attendance is required, that they should be given to understand that such neglects of duty are not to be slightly passed over. And as the said *J. W.* will have an opportunity of making his defence upon a trial, and even after a conviction, it will still be in our power to suspend the entering of any judgment to vacate the patent; he humbly conceives it may be fitting for us to order a *Scire facias* to be brought to repeal the said *J. W.*'s patent; and for that purpose to issue our royal warrant to you, authorizing and directing you to cause such *Scire facias* to be sued out, if we shall be pleased so to do. We taking the premisses into our royal consideration are graciously pleased to condescend thereunto. Our will and pleasure therefore is, that you sue out and prosecute a writ of *Scire facias* in our name, for repealing the said *J. W.*'s patent. And we do hereby authorise and require you to do and perform all matters and things that may be requisite and necessary in that behalf; And for so doing this shall be your warrant. Given at our court at *Kensington* the 7th day of *September* 1739, and in the 13th year of our reign. *By his majesty's command.*

To our trusty and
well beloved our
attorney general.

Holles Newcastle.

A

Scire Facias.

443

A draught of the *Scire facias* is to be prepared and the attorney signs under it as *Attorney general's Fiat.* follows.

Let there be a writ of *Scire facias* issued according to the tenor within mentioned, dated this 23d day of *October* 1739.

D. Ryder.

The attorney general's fee is 2*l.* 2*s.* 0*d.*
His clerk's ————— 0*l.* 13*s.* 4*d.*

GEORGE the Second, by the grace *Scire facias*
of God, of *Great Britain, France and Ire-* *to revoke*
land king, defender of the faith, &c. *letters patent*
the sheriff of *Middlesex* greeting. *To granted of the*
Whereas office of Somers-
our late royal father by his letters pa-
tent under his great seal of *Great Britain,*
bearing date at *Westminster* the 20th day *Recital of the*
of *June* in the 6th year of his reign, did *letters patent.*
of his special grace, and of his certain
knowledge and mere motion, for himself
his heirs and successors, make, nominate
and create, erect, constitute and invest
J. W. of B. in his county of *York,* Esq;
one of his heralds at arms, and gave him
that name commonly called *Somerset;* and
by the same letters patent gave and grant-
ed the stile, title, liberties and prehemi-
nencies, with such office convenient and
agreeing of ancient time accustomed, which
said office S. S. Esq; otherwise *Somerset,*
then deceased then lately had and enjoyed,
To have and exercise the said office, and
and the name, stile, title, liberties and
preheminencies aforesaid, to the said J. W.
otherwise

otherwise *Somerset*, as long as he should behave himself well in the same office. And further, our said late royal father did by his said letters patent, for himself, his heirs and successors, grant to the said *J. W.* for the exercise of the said office, a certain annuity or annual rent of 40 marks of good and lawful money of *Great Britain*, to be had and received by the said *J. W.* otherwise *Somerset*, yearly, as long as he should behave himself well in the same office, from the treasurer of our said late royal father, his heirs and successors, at the receipt of his *Exchequer*, by the hands of the commissioners for his treasury, or the treasurer and chamberlain of our said late royal father, his heirs and successors, there for the time being, at the feast of *St. Michael* the archangel, and of the annunciation of the blessed virgin *Mary*, by equal portions; the first payment thereof to begin from the feast of *St. Michael* the archangel then last past, together with all other rights, fees, profits, advantages and emoluments whatsoever, to the same office due and accustomed, in as ample manner and form as *J. P. Esq; Somerset*, Sir *T. St. G. Knt. Somerset*, *P. B. Esq; Somerset*, or the said *S. S. Somerset*, or any other or others of the heralds of our said late royal father called *Somerset*, then lately had and received for the exercise of the said office, as by the said letters patent inrolled in our *Chancery* more fully appears: And whereas the said *J. W. Somerset* at divers times

*Assignment of
breach of duty
in non-atten-
dance.*

times within the space of 13 years last past was required by the duty of his said office, and ought personally to have attended the business and service thereof; And whereas we are given to understand, that the said *J. W. Somerset* for the time last mentioned hath not personally attended the business and service of his said office, but hath absented himself therefrom, and neglected the duty thereof in contempt of us and to our prejudice, whereby the said *J. W. Somerset* hath incurred the forfeiture of his said office, and of all his right, title and interest therein: Nevertheless we being willing to have further and more certain information of and concerning the truth of the said premisses, and that right and justice should be done therein, do command you that by good *Scire facias* and lawful men of your bailiwick you make known to the said *J. W. Somerset*, that he be before us in our chancery aforesaid in one month from the day of *St. Michael* next to come, wheresoever it then shall be, to shew if he has or knows any thing to say why the said letters patent and the enrolment thereof, for the reasons aforesaid, ought not to be cancelled, vacated and annulled, and restored to us in our Chancery, there to be cancelled, and further to do and receive concerning the premisses whatsoever the said court shall consider in this behalf; And have you there the names of those by whom you shall so cause it to be so made known to him, and this

Scire Facias.

this writ. Witness *John* archbishop of C. and other guardians and justices of the kingdom, at *Westminster* the 11th day of *October* in the 14th year of our reign.

Verney. Asheton.

Label.

To the sheriff of *Middlesex*, *Scire facias* to revoke letters patent granted to *J. W. Esq;*

Verney. Asheton.

The within named *J. W. Somerset*, hath not any thing in my bailiwick, where or by which I can give him notice, as by this writ I am commanded, nor is the said *J. W. Somerset*, found in the same.

The answer of

Henry Marshal, Esq; }
and } Sheriff.
Richard Hoare, Esq; }

Testatum
Sci. fa.

GEORGE the Second, by the grace of God, of *Great Britain, France and Ireland* king, defender of the faith, &c. To the sheriff of *Northamptonshire*, greeting: Whereas (*ut antea* to) and that right and justice should be done therein, by our writ to our sheriff of our county of *Middlesex* we lately commanded him, that by (*to*) and that he should have there the names of those by whom he should so cause it to be made known to him, and our said writ; At which day in our said writ contained, our said sheriff of *Middlesex* aforesaid, to wit, *H. M. Esq;* and *R.*

H. Esq; returned to us in our Chancery aforesaid, That the said *J. W. Somerset*, had not any thing in his bailiwick where or by which he could give him notice, as by the said writ he was commanded, nor was the said *J. W. Somerset* found in the same, as by the return thereof, on the file of our Chancery remaining on record, does more fully appear: Whereupon it is sufficiently testified before us in our Chancery aforesaid, that the said *J. W. Somerset*, hath sufficient in your bailiwick where or by which you may make it known to him: Therefore we command you, that by good and lawful men of your bailiwick you make known to the said *J. W. Somerset* that he be before us in our Chancery aforesaid in eight days of *St. Martin* next to come, wheresoever it shall then be, to shew if he hath or know any thing to say why (to) shall consider in this behalf; And have you the names of those by whom you shall so cause it to be made known to him, and this writ. Witness ourself at *Westminster* the 30th day of *October* in the 14th year of our reign.

Verney. Frewen.

GEORGE the Second, &c. To the Sci. fac. sheriffs of *London* greeting: *Whereas A. H.* quare executionem non widow, who was the wife of Sir *R. H.* after error brought in Knt. deceased, lately in our court before Sir *R. E.* Knt. and his brethren, then our dower. B. R. justices of the Common Bench at *Westminster*, by our writ of dower, whereof she

she hath nothing, &c. And by the judgment of the same court recovered against *M. P. Esq;* as well her seisin of a third part of 24 messuages, with the appurtenances, in the parish of *St. Dunstan in the west, London*, as also 754 *l. 6 s. 7 d.* as well for the value of the third part of the tenements aforesaid, with the appurtenances, from the time of the death of the said *Sir R.* her late husband, &c. and whereof the said *Sir R.* died seised, as for her damages, costs and charges, which she sustained by reason of the detaining the said dower, whereof the said *M.* is convicted, as by the inspection of the record and process thereof, which by virtue of our writ for correcting errors prosecuted by the said *M.* of and upon the premisses, we lately caused to be brought into our court before us, it appeareth to us of record; And now on the behalf of the said *A.* we have received information in our court before us, that although judgment be thereof given, yet execution of the said judgment doth still remain to be done unto her; Whereupon the said *A.* hath besought us, that a proper remedy may be provided for her in this behalf: *We therefore* being willing that what is just should be done in this behalf, do command you that by honest and lawful men of your bailiwick ye warn the said *M.* that he appear before us on the octave of the purification of the blessed virgin *Mary*, where-soever we shall then be in *England*, to shew

shew if he hath or knows of any thing to say for himself, wherefore the said *A.* should not have her execution against him, as well for the seisin of the said third part of the tenements aforesaid, with the appurtenances, as the value, damages, costs and charges aforesaid, according to the force, form and effect of the recovery aforesaid, if it shall seem expedient to him, and further to do and receive what our said court before us shall then consider of him in this behalf: And have ye there then the names of those by whom ye shall have warned him, and this writ. Witness *Philip lord Hardwicke at Westminster* the 23d day of *January* in the 9th year of our reign.
Ventris.

GEORGE the Second, &c. To the Sheriff of *Surry* greeting: *Whereas* *T.* lately in the court of our palace of *Westminster*, before the judges of that court without our writ, by the judgment of the same court, recovered against *T. W.* 6 l. 19 s. 10 d. for his damages which he sustained, as well by occasion of the not performing certain promises and undertakings made by the said *T.* to the said *S.* at *Southwark* in your county, and within the jurisdiction of the same court, as for his costs and charges expended by him about his suit in that behalf, whereof the said *T.* is convicted, as by the inspection of the record and process thereof

Sci. fac. qua-
re execut.
non after er-
ror on a judg-
ment in the
palace court.
B. R.

Vol. II. G g in

in our court before us at *Westminster* now remaining, and which for certain causes we lately caused to be brought into our same court before us, appears to us of record; And now on the behalf of the said *J.* in our court before us we have been informed that although judgment be thereof given, yet execution of the said damages still remains to be made to the said *J.* Whereupon the said *J.* hath besought us that a proper remedy may be provided for him in this behalf; And we being willing that what is just should be done in this behalf, do command you, that by good and lawful men of your bailiwick you make known to the said *J.* that he be before us on the octave of *St. Hilary*, wheresoever we shall then be in *England*, to shew if any thing he has or knows to say for himself why the said *J.* ought not to have his execution against him of the damages aforesaid, according to the force, form and effect of the said recovery, if it shall seem expedient to him, and further to do and receive what our same court before us shall consider of him in this behalf: And have you there the names of those by whom you shall make known to him, and this writ. Witness, &c.

Mich.

Mich. 6 Geo. 2.

G g 2

the

*And for costs
on the Sci. fa.
de bonis testa-
toris.*

*Si tantum,
&c.*

*Si non, &c.
de bonis pro-
priis.*

the said *A.* and *B.* to be administered, as also appears to us of record; and that you should have that money before us at *Westminster* on *Monday* next after three weeks of *St. Michael* to render to the said *T. M.* for his damages aforesaid. And by that writ we also commanded you, that of the goods and chattels which were of the said *T. H.* being in the hands of the said *A.* and *B.* in your bailiwick to be administered, you should cause to be made 16*l.* which were adjudged to the said *T. M.* in our said court before us at *Westminster*, according to the form of the statute in such case thereupon lately made and provided, for his costs and charges expended by him about his suit, in the prosecution of our writ of *Scire facias* of and upon the said judgment against the said *A.* and *B.* in our court before us at *Westminster* aforesaid lately prosecuted, whereof the said *A.* and *B.* were convicted, as also appears to us of record, of the goods and chattels which were of the said *T. H.* at the time of his death, being in the hands of the said *A.* and *B.* to be administered if they had so much in their hands to be administered; and if they had not so much in their hands to be administered then the said 16*l.* to be levied of the proper goods and chattels of the said *A.* and *B.* And that you should have that money before us at *Westminster* at the day aforesaid, to render to the said *T. M.* for those costs and charges.

charges. *And* you at that day returned *Return.* to us that the said *A. H.* and *B. H.* had not any goods or chattels, and that neither of them had any goods or chattels in your bailiwick which were of the said *T. H.* deceased, at the time of his death in their hands to be administered, whereof you could cause to be made the damages, costs and charges aforesaid, or any part thereof. *And* that the said *A.* and *B.* or either of them, had not any goods or chattels in your bailiwick whereof you could cause to be made the said 16 *l.* for costs and charges aforesaid or any part thereof. *And* because the said return by you so made as aforesaid in our court before us at *Westminster* aforesaid, seems to be in delay of the execution of the damages, costs and charges so as aforesaid recovered and adjudged; *And also* for that that in our *Devastavit* same court before us at *Westminster* aforesaid, on the behalf of the said *T. M.* it is sufficiently testified, that diverse goods and chattels which were of the said *T. H.* at the time of his death, to the value of the said damages, costs and charges, came to the hands and possession of the said *A.* and *B.* after the death of the said *T. H.* to be administered, and that the said *A.* and *B.* have sold, wasted and elained the said goods and chattels, and have converted and disposed of the money coming therefrom to their own proper use, to the intent that the said execution thereof should not yet be made. *And* we being unwilling that

Fi. fac. de bonis testatoris.

If the sheriff cannot levy, then if it shall appear by inquisition that the executors have wasted, &c.

Scire fac. quare execution non, &c. de bonis propriis,

those things which in our same court before us have been rightly acted and adjudged, should be avoided by art or deceit, command you that of the goods and chattels which were of the said *T. H.* at the time of his death, being in the hands of the said *A.* and *B.* to be administered in your bailiwick, you cause to be made the damages, costs and charges aforesaid, if thereof you can levy the same; and have the money thereof levied before us at *Westminster*, on *Tuesday* next after the morrow of *All Souls*, to render to the said *T. M.* for the damages, costs and charges aforesaid. And if you cannot levy the same, then if it can appear to you by inquisition, in this behalf, to be taken upon the oath of good and lawful men of your bailiwick, or by any means whereby you may be better informed that the said *A.* and *B.* have sold, wasted, elained or converted to their own proper use goods and chattels which were of the said *T. H.* at the time of his death, being in the hands of the said *A.* and *B.* to be administer'd, to the value of the damages, costs and charges aforesaid, or of any part of them; Then by good and lawful men of your bailiwick make known to the said *A.* and *B.* that they be before us at *Westminster* on the said *Tuesday* next after the morrow of *All Souls*, to shew if any thing they have or know to say for themselves, why the said *T. M.* ought not to have his execution against them of the damages, costs and charges aforesaid,

to be levied of the proper goods and chattels of the said *A.* and *B.* if it shall seem expedient to him, and further, to do and receive what our court before us shall then and there consider of them in this behalf; and have there then as well the names of those by whose oath you shall take that inquisition in this behalf, as the names of those by whom you shall make known to the said *A.* and *B.* and this writ. Witness *Robert lord Raymond at Westminster*, the 23d day of *October* in the 6th year of our reign.

At which day before the lord the king *Return.*
at *Westminster* came the said *T. M.* in his proper person, and the sheriffs of *London*, namely *Sir H. H. Knt.* and *R. A. Esq;* at that day returned the said writ in form aforesaid directed to them, in manner and form following, that is to say, *That the Nulla bona.]*
said *A.* and *B.* had not, nor had either of them any goods or chattels which were of the said *T. H.* deceased, at the time of his death in their hands to be administered, in their bailiwick, whereof the damages, costs and charges aforesaid, or any part thereof, might be caused to be made; *And* that the said *A.* and *B.* had not, nor had either of them any thing in their bailiwick by which they could make known to them or either of them; and that they were not found, nor was either of them found in the same. *But* that the said *A. H.* and *B. H.* had diverse goods per inquisit.
and chattels which were of the said *T. H.* deceased, at the time of his death in their hands

hands and custody, which after the death of the said *T. H.* came to the hands and possession of the said *A.* and *B.* to be administered, to the value of the damages, costs and charges aforesaid, which said goods and chattels they the said *A.* and *B.* have eloined, wasted and converted to their own proper use, as appears to the said sheriffs by a certain inquisition taken in that behalf, on the oath of good and lawful men of their bailiwick, and annexed to the said writ.

*Plea, Plene
Administra-
ver.*

And the said *A. H.* and *B. H.* at the same day being solemnly called, come in their proper persons and defend the force and injury when, &c. And they say that the said *T. M.* ought not to have his execution against them of the damages aforesaid, of their proper goods and chattels, because they say that they the said *A.* and *B.* on the day of the suing forth the said writ of *Scire facias*, had fully administered all the goods and chattels which were of the said *T. H.* at the time of his death, which had come to the hands of the said *A.* and *B.* to be administered, to wit, at *London* aforesaid, in the parish of *St. Mary le Bow* in the ward of cheap; and that they have not, nor had on the day of suing forth the said writ of *Scire facias*, any goods or chattels which were of the said *T. H.* at the time of his death, in their hands to be administered; *Without this*, that the said *A.* and *B.* have wasted, sold, eloined or converted, or disposed to their

*Devastavit
traversed.*

their own proper use any goods or chattels which were of the said *T. H.* at the time of his death, in manner and form as above is supposed by the said return of the said writ of *Scire facias* and the inquisition aforesaid thereupon taken; And this they are ready to verify. Wherefore they pray judgment if the said *T. M.* ought to have execution against them of the said damages, costs and charges of the proper goods and chattels of the said *A.* and *B.* &c.

And the said *T. M.* says, that he by *Replication*, any thing by the said *A.* and *B.* above in *issue on the* pleading alledged ought not to be pre-*traverse.* cluded or retarded from having his execution against the said *A.* and *B.* of the damages, costs and charges aforesaid, of the proper goods and chattels of the said *A.* and *B.* because he says that the said *A.* and *B.* have elained, wasted and converted to their own proper use diverse goods and chattels which were of the said *T. H.* at the time of his death, and which after the death of the said *T. H.* came to the hands and possession of the said *A.* and *B.* to be administered, to wit, to the value of the damages, costs and charges aforesaid, in manner and form as above is found by the said inquisition, to wit, at *London* aforesaid, in the parish and ward aforesaid; And this he prays may be inquired of by the country: And the said *A.* and *B.* do so likewise: *Venire facias* Therefore it is commanded to the sheriffs that they cause to come before the lord the king at *Westminster*,

minster, on next after twelve,
 &c. By whom, &c. And who neither, &c.
 To recognize, &c. Because as well, &c.
 The same day is given to the parties afore-
 said, at the same place, &c.

Mich. 6 Geo. 2. Verdict for the plaintiff.

Error in parliament, and bail put in
 the judgment, being *de bonis pro-*
priis.

Easter 5 Geo. 2.

Sci. Fa. against
 executors on a
 judgment a-
 gainst testator.
 B. R.

*Recital of
 judgment.*

London, to wit, The lord the king sent his
 writ close to the sheriffs of *L.* directed in
 these words, *to wit*, George the Second, &c.
To the sheriffs of *L.* greeting: *Whereas*
T. M. lately in our court before us at *W.*
 by bill and without our writ, and by
 the judgment of the same court recovered
 against *T. H.* 511 l. 10s. for his damages
 which he sustained as well by occasion of
 the not performing certain promises and
 undertakings lately made by the said *T. H.*
 to the said *T. M.* as for his costs and
 charges expended by him about his suit in
 that behalf, whereof the said *T. H.* is
 convicted, as appears to us of record. *And*
afterwards the said *T. H.* at *L.* aforesaid,
to wit, in the parish of *St. Mary le Bow* in
 the ward of *Cheap*, made his testament
 and last will in writing, and by the same
 testament constituted *A. H.* and *B. H.* exe-
 cutors thereof, and afterwards died there;
 after whose death the said *A. H.* and *B. H.*
 took

*Testator made
 his will and
 defendants exe-
 cutors thereof.*

took upon themselves the burthen of the *Diss, and de-*
 execution of the said testament. *And now* *sendants take*
 on the behalf of the said *T. M.* in our *the executor-*
 court before us, we have been informed, *ship upon them.*
 that although judgment be thereof given,
 yet execution of the damages aforesaid
 still remains to be made to him, whereupon
 the said *T. M.* prays that a proper remedy
 may be provided for him in this behalf.

And we being willing that what is just *Sci. Facias.*
 should be done in this behalf, command

you that by good and lawful men of your
 bailiwick you make known to the said *A. H.*
 and *B. H.* that they be before us at *W.* on
Wednesday next after 15 days of *Easter*, to
 shew if they have or know any thing to
 say for themselves, why the said *T. M.*
 ought not to have his execution against
 the said *A. H.* and *B. H.* of the damages
 aforesaid, of the goods and chattels which
 were of the said *T. H.* at the time of his
 death, being in the hands of the said *A. H.*
 and *B. H.* to be administered according
 to the force, form and effect of the said
 recovery, if it shall seem expedient to
 them; and further to do and receive all
 and singular those things which our said
 court before us shall then and there con-
 sider of them in this behalf; And have
 there then the names of those by whom
 you shall make known to them, and this
 writ. Witness *Robert lord Raymond* at
W. the 12th day of *February* in the 5th
 year of our reign.

At

Return Nihil.

At which day before the said lord the king at *W.* came the said *T. M.* in his proper person, and the sheriffs of *L.* namely, *S. R.* and *T. P.* Esqs. at that day return, that the said *A. H.* and *B. H.* have nothing, nor has either of them any thing in their bailiwick, whereby they can make known to them or to either of them, nor are they found, nor is either of them found in the same. And the said *A. H.* and *B. H.* come

Alias awarded.

not. *Therefore*, as before, it is commanded to the sheriffs of *L.* that by good, &c. they make known to the said *A. H.* and *B. H.* that they be before the said lord the king at *W.* on *Thursday* next after three weeks of *Easter*, to shew in form aforesaid, if, &c. And further, &c. The same day is given to the said *T. M.* at the same place, &c.

Return Nihil.

At which day before the said lord the king at *W.* came the said *T. M.* in his proper person; And the said sheriffs of *L.* aforesaid, as before, return, that the said *A. H.* and *B. H.* have nothing, nor has either of them, any thing in their bailiwick, whereby they can make known to them or to either of them, nor are they found, nor is either of them found in the same. And the said *A. H.* and *B. H.* at the same day being solemnly called also come, by *N. T.* their attorney, and say, *That* the said *T. M.* ought not to have execution against the said *A. H.* and *B. H.* of the damages aforesaid, of the goods and chattels, which were of the said *T. H.* at the

Defendants appear.

Plea, a Ca. Sa. against testator, who being taken in execution paid the damages recovered.

the

the time of his death being in the hands of the said *A.* and *B.* (as is above supposed by the said writ) to be administered, because they say, that after the giving the said judgment, and before the issuing out of the said first writ of *Scire facias*, and in the life-time of the said *T. H.* to wit, on the 18th day of *June* in the 5th year of the reign of the said lord the present king, the said *T. M.* for obtaining his said damages, prosecuted out of the court here of and upon the said judgment a certain writ of the said lord the king of *Capias ad satisfaciendum* against the said *T. H.* directed to the then sheriffs of *L.* aforesaid, by which said writ it was commanded to the said then sheriffs, that they should take the said *T. H.* if he should be found in their bailiwick, and safely keep him, so that they might have his body before the said lord the king at *W.* on *Wednesday* next after three weeks of the holy *Trinity*, to satisfy the said *T. M.* of the damages aforesaid, whereof he was convicted; And that they should have then here the said writ, which said writ of *Capias ad satisfaciendum*, the said *T. M.* afterwards, and in the life-time of the said *T. H.* to wit, on the 20th day of *June* in the 5th year aforesaid, at *L.* aforesaid to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, delivered to *J. F.* Esq; and Sir *I. S.* Knight, then being sheriffs of *L.* aforesaid, to be executed in due form of law; by virtue of which said writ of
Capias

Capias ad satisfaciendum the said *J. F.* Esq; and Sir *J. S.* Knight, then as aforesaid being sheriffs of *L.* aforesaid, afterwards and before the return of the said writ, and in the life-time of the said *T. H.* to wit, on the 1st day of *July* in the 5th year aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, took and arrested the said *T. H.* and then and there had and detained the said *T.* in their custody in execution for the damages aforesaid, until the said *T. H.* afterwards in his life-time, to wit, on the 2d day of *July* in the 5th year aforesaid, at *L.* aforesaid, in the parish and ward aforesaid paid and satisfied the said damages to the said *T. M.* And this the said *A.* and *B.* are ready to verify: Wherefore they pray judgment if the said *T. M.* ought to have execution against the said *A.* and *B.* of the damages aforesaid, of the goods and chattels which were of the said *T. H.* at the time of his death, being in the hands of the said *A.* and *B.* (as above is supposed by the said writ) to be administered, &c.

Replication,
that the testa-
tor was not
taken in exe-
cution, &c.

And the said *T. M.* says that he by any thing before alledged ought not to be precluded from having his execution of the damages aforesaid in form aforesaid, because in protesting that he the said *T. M.* did not prosecute any such writ of *Capias ad satisfaciendum*, as the said *A.* and *B.* above in pleading have alledged, and also in protesting that the said *T. H.* in his life-time did not pay or satisfy the damages aforesaid,

aforesaid, or any part thereof, to the said *T. M.* For plea the said *T. M.* says, that the said *T. H.* in his life-time was not taken in execution for the damages aforesaid in manner and form as the said *A.* and *B.* above in pleading have alledged; And he prays that this may be inquired of by the country; And the said *A.* and *B.* do so likewise, &c. Therefore let a jury come thereupon before the lord the king at *West-*
minster on — next after —; And who neither, &c. To recognize, &c. Because as well, &c. The same day is given to the parties aforesaid at the same place, &c.

Issue.

Venire facias.

GEORGE, &c. To the sheriff of *Devon-*
shire, greeting: Whereas *W. B.* in our court before the mayor of the borough of *Totness* in your county, by the judgment of the same court recovered against *W. G.* 3 s. 4 d. which in our said court were ad- judged to the said *W. B.* for his damages which he sustained, as well by occasion of the not performing certain promises and undertakings made by the said *W. B.* to the said *W. G.* and not performed, as for his costs and charges expended by him about his suit in that behalf, whereof the said *W. G.* is convicted, as by the inspection of the record and process thereupon, which for the cause of error intervening we lately caused to come in our court before us, and in our said court before us is now remaining, more fully appears: And now on the behalf of the said *W. B.* we have

Sci. fac.

quare execut.

non, &c.

on a judgment

in an inferior

court removed

by writ of

error. B. R.

have been lately informed in our court before us, that although judgment be thereupon given, yet execution of the said judgment still remains to be made to him; Whereupon the said *W. B.* hath prayed us, that a proper remedy may be provided for him in this behalf: *And* we being willing that what is just should be done in this behalf, *command you*, that by good and lawful men of your bailiwick, you make known to the said *W. G.* that he be before us in 15 days of *St. Martin*, wheresoever we shall then be in *England*, to shew if any thing he has or knows to say for himself, why the said *W. B.* ought not to have execution of the damages aforesaid, according to the force, form and effect of the said recovery, if it shall seem expedient to him, and further to do and receive what our said court before us shall then consider of him in this behalf; And that you have there then the names of those by whom you shall make known to him, and this writ. *Witness, &c.*

*Sci. fac. for
executors to
receive a judgment
obtained
by their testator.*

GEORGE, &c. To the sheriff of *Bucks* greeting: Whereas *J. D.* lately in our court, *to wit*, in the term of *St. Hilary* in the 9th year of our reign, before *Alexander Denton, Esq;* *Sir John Fortescue Aland, Knt.* and *Thomas Reeve, Esq;* then our justices of the bench at *Westminster*, by the consideration of the same court recovered against *J. B.* late of *Chepping-Wycombe* in your county, inn-holder, otherwise called *J. B.* late of *Chepping-Wycombe*

in the county of *Bucks*, inn-holder, as well a certain debt of 590 *l.* as 50 *s.* which to the said *J. D.* in our same court were adjudged for his damages which he had by reason of detaining that debt, whereof he is convicted, as by the record and proceedings thereof remaining in our same court manifestly appears; yet execution of that judgment still remains to be made, and the said *J. D.* is dead, as we have been informed by *W. C.* and *T. B.* executors of the testament and last will of the said *J. D.* And because we will that those things which are rightly done in our same court be duly put in execution, we command you, that by honest and lawful men of your bailiwick you give notice to the said *J. B.* that he be before our justices at *Westminster* from the day of the holy *Trinity* in three weeks, to shew if he hath or knoweth any thing to say for himself why the said *W.* and *T.* ought not to have execution against him for the debt and damages aforesaid, according to the form of the recovery aforesaid, if to him it shall seem meet: And have you there the names of those by whom you shall give him notice, and this writ. Witness, &c.

It was commanded the sheriff, that *Entry thereof*
whereas *J. D.* lately in the court of the *on the roll.*
lord the now king before *Alexander Denton*, Esq; *Sir John Fortescue Aland*, Knt.
and *Thomas Reeve*, Esq; then justices of
him the lord the king of the Bench here,
to wit, at *Westminster*, by the consideration
Vol. II. H h tion

tion of the same court had recovered against *J. B.* late of *Chepping-Wycombe* in the county of *Bucks*, inn-holder, otherwise called *J. B.* of *Chepping-Wycombe* in the county of *Bucks*, inn-holder, as well a certain debt of 590*l.* as 50*s.* which to the said *J. D.* in our same court were adjudged for his damages which he had by reason of detaining that debt, whereof he is convicted, as by the record and proceedings thereof in the same court of the said lord the now king here, *to wit*, at *Westminster* aforesaid remaining, manifestly appears; Yet execution of the judgment aforesaid still remains to be made, and the said *J. D.* is dead, as the king hath been informed by *W. C.* and *T. B.* executors of the testament and last will of the said *J. D.* And because, &c. that by honest, &c. the said sheriff caused the said *J. B.* to know that he should be here at this day, *to wit*, from the day of the holy *Trinity* in three weeks, to shew if any thing, &c. why the aforesaid *W. C.* and *T. B.* ought not to have execution against him for the debt and damages aforesaid, according to the form of the recovery aforesaid; If, &c. And now here at this day came the aforesaid *W. C.* and *T. B.* by *W. T.* their attorney, and presented themselves the fourth day against the aforesaid *J. B.* in the plea aforesaid; And he being solemnly required, did not come, and the now sheriff hath returned that he had nothing, &c. nor is to be found, &c. Therefore it is considered,

sidered, that the aforesaid *W. C.* and *T. B.* have execution against the aforesaid *J. B.* of the debt and damages aforesaid by default, &c.

Trin. 10 & 11 Geo. 2. Roll. 659.

GEORGE the Second, &c. To the Scire facias sheriffs of *London* greeting: *Whereas M. B.* in case, where and *G. B.* lately, *to wit*, in *Hilary* term in one of the plts. the 13th year of our reign, before Sir *John Willes*, Knt. and his companions, married after judgment. then our justices of the Bench at *Westminster*, by the consideration of that court recovered against *J. B.* late of, &c. 75 l. for their damages which they had on occasion of the not performing certain promises and undertakings to the said *M.* and *G.* then lately made by the said *J.* at *L.* whereof he is convicted, as by the record and proceedings thereof remaining in our said court of the Bench is manifestly apparent: *And whereas* the said *M.* after the recovery of the damages aforesaid, *to wit*, on the 1st day of *March* in the year of our Lord 1739, at *London* aforesaid, took to her husband one *P. S.* And although judgment is rendered in form aforesaid, yet execution of the said judgment still rests to be made to them the said *P. M.* and *G.* as we have received information from the said *P. M.* and *G.* And because we are willing that such things as are rightly done in our said court should meet with a due execution; we command you that by honest and lawful men of

H h 2

your

your bailiwick, you cause it to be made known to the said *J.* that he be before our justices at *W.* in eight days of the holy *Trinity*, to shew if he has or knows any thing to say for himself why the said *P. M.* and *G.* ought not to have execution against him for the damages aforesaid, according to the form and effect of the said recovery, if it shall seem expedient to him; And have you there the names of those by whom you shall cause it to be made known to him, and this writ. Witness Sir *John Willes*, Knt. at *Westminster*, the 19th day of *May* in the 13th year of our reign.

Borret.

*Entry of a
Scire facias
in debt by a
surviving plt.*

Devonshire, **T**HE sheriff was commanded to wit, ed, that whereas *E. P.* clerk, and *R. F.* the younger, gentleman, lately, that is to say, in the term of the holy *Trinity* in the tenth year of his present majesty's reign, in his said majesty's court of the bench here, by the consideration of the same court had recovered against *R. C.* late of, *Essex* clerk, as well a certain debt of 250 *l.* as also 50 *s.* which in the same court were adjudged to the said *E. P.* and *R. F.* for their damages, which they had sustained by reason of the detaining the said debt, whereof he is convicted, as by the record and process thereof remaining in the same court manifestly appears: And whereas the said *E.* afterwards died, and the said *R. F.* survived him; Nevertheless execution of the said judgment yet remains to be

be made, as the king hath been informed by the said *R. F.* And because, *&c.* that by honest, *&c.* he should make known to the said *R. C.* that he should be here at this day, *to wit*, on the morrow of the ascension of our Lord, to shew if any thing, *&c.* why the said *R. F.* ought not to have execution against him for the debt and damages aforesaid, according to the form of the said recovery, if, *&c.* And now at this day the said *R. F.* cometh here in his proper person, and offereth himself the fourth day against the said *R. C.* in the plea aforesaid; and he, though solemnly called, cometh not; And the sheriff now returneth, that he hath nothing, *&c.* nor is to be found, *&c.* Therefore it is considered, that the said *R. F.* have execution against the said *R. C.* for the debt and damages aforesaid, by default, *&c.* *Return Nihil.*

GEORGE the Second, *&c.* To the sheriff of *Middlesex*, greeting. Whereas *W. N.* late of, *&c.* and *W. W.* late of, *&c.* lately, that is to say, in the term of *Easter* in the 11th year of our reign, in our court of Common Pleas, before Sir *John Willes*, Knt. and his companions, our justices of our said court of Common Pleas at *Westminster*, acknowledged, and each of them did acknowledge to owe to *J. M.* the sum of 80*l.* which said sum of 80*l.* they the said *W. N.* and *W. W.* for themselves and their heirs willed and granted, and each of them for himself and his heirs did will and grant, to be made of the lands and chattels of

Scire facias
on a recogni-
zance of bail
in debt.

each of them, and to be levied to the use and behoof of the said *J.* *And whereas* also *A. A.* late of, &c. otherwise called, &c. the same term, before the same justices in our said court acknowledged himself to owe to the said *J.* the sum of 160*l.* which said sum of 160*l.* the said *A.* for himself and his heirs, willed and granted to be made of his lands and chattels, and to be levied to the use and behoof of the said *J.* under this condition, that if judgment should happen to be given in our said court for the said *J.* against the said *A.* in a certain plea of debt upon demand 200*l.* by the said *J.* against the said *A.* in our said court brought, then the said *A.* should satisfy as well the said debt of 200*l.* as also all the damages which to the said *J.* against the said *A.* in our said court by occasion of detaining the said debt should be adjudged, or render his body on that occasion to our prison of the *Fleet*; And although the said *J.* in the term of the holy *Trinity* in the 11th and 12th years of our reign, before the aforesaid Sir *John Willes*, Knt. and his companions, our justices of our said court of Common Pleas at *Westminster*, by the consideration of the same court recovered against the said *A.* as well the said debt of 200*l.* as also 15*l.* which to the said *J.* against the said *A.* in our same court were awarded for his damages which he had by occasion of detaining the said debt, whereof he is convicted, as by the record and proceedings thereof

thereof in our said court now remaining manifestly appears: Nevertheless the said *A.* has not satisfied the said *J.* for the debt and damages aforesaid, nor rendered his body to our said prison upon the occasion aforesaid, according to the form of the said recognizance, as we have been given to understand by the information of the said *J.* And because we are willing that those things which are rightly done and acknowledged in our said court, should be brought to a due execution, we command you, that by honest and lawful men of your bailiwick you make known to the said *W. N.* and *W. W.* and *A. A.* that they be before our justices at *Westminster* from the day of *St. Martin* in 15 days, to shew if they know of or have any thing to say for themselves, that is to say, the said *W. N.* why the said 80 *l.* by him in form aforesaid acknowledged should not be made upon his lands and chattels, the said *W. W.* why the said 80 *l.* by him in form aforesaid acknowledged should not be made upon his lands and chattels, and the said *A. A.* why the said 160 *l.* by him in form aforesaid acknowledged, should not be made of his lands and chattels, to the use and behoof of the said *J.* to be levied according to the form of the said recognizance, if to them it shall seem expedient: And have you there the names of those by whom you shall give such notice, and this writ. Witness Sir *John Willes*, Knt. at *Westminster*, the 6th day of *November* in the 12th year of our reign.

H h 4

Easter

Easter 6 Ann. Ro. 336.

Entry of a recognizance of bail on a Habeas corpus cum causa, in C. B.

The Habeas Corpus.

The return.

London, *I* was commanded to the mayor, to wit, the aldermen and sheriffs of London, that immediately after the receipt of this writ they should have the body of *I. S.* detained as it was said in the prison of the lady the queen under their custody, by whatsoever name the said *I.* should be called in the same, together with the day and cause of the taking and detaining of the said *I.* before Sir Thomas Trevor, Knt. chief justice of the said lady the queen of the Bench, at his chamber in the Inner Temple, London, to do and receive all and singular those things which the said chief justice should then and there consider of him in that behalf: And that they should have there that writ, &c. Afterwards, to wit, on the 19th day of February in the year of our Lord 1706, the said *I.* came in his proper person, under the custody of the said sheriffs, by virtue of the said writ, and the said sheriffs, namely Sir A. C. Knt. and Sir W. B. Knt. now return, that the execution of the said writ appears in a certain schedule annexed to that writ, the tenor of which said schedule follows in these words: We Sir A. C. Knt. and Sir W. B. Knt. sheriffs of the city of London aforesaid, certify to Sir Thomas Trevor, Knt. chief justice of the lady the queen of the Bench, &c. named in the writ annexed to this schedule, that before the coming

coming of the said writ to us, *to wit*, on the 28th day of *January* in the 5th year of the reign of our lady *Anne*, by the grace of God, of *England, Scotland, France and Ireland* queen, defender of the faith, &c. *I. S.* named in the said writ, was taken at *London* aforesaid, and detained in the prison of the said lady the queen under our custody, by virtue of a certain plaint levied in the court of the said lady the queen held on the day and year aforesaid, before me the said Sir *A. C. Knt.* one of the sheriffs of the city aforesaid, against the said *I.* by the name of, &c. at the suit of *E. S.* in a plea of debt upon demand of 40 *l.* whereupon the said parties have pleaded to an issue of the country, and so it depends undetermined; And this is the cause of the taking and detaining of the said *I. S.* whose body we have ready. *Afterwards, to wit*, on the said 19th day of *February* in the year of our Lord 1706 aforesaid, before *Robert Tracey, Esq;* one of the justices of the court here, at his chamber situate in *Serjeants-Inn* in *Fleet-street*, came the said *I.* and *E. W.* of *Staples-Inn, London, Gent.* and *M. J.* of *Fetter-lane, London, Gent.* in their proper persons, and undertook, and each of them undertook, *to wit*, the said *I.* in the sum of 80 *l.* and the said *E.* and *M.* for themselves separately in the sum of 40 *l.* that the said *I.* should appear here in his proper person, or by his attorney sufficient in the law, to the action or writ of the said

said *E.* of and upon the cause aforesaid, before the end of two terms then next following, to be sued out and prosecuted in the same court here, and to answer to the said *E.* in the plea aforesaid; And also if it should happen that judgment after the appearance of the said *I.* made in the court here should be given for the said *E.* to satisfy the said *E.* of the debt to be recovered or adjudged against the said *I.* in the plea aforesaid, or that he the said *I.* should render himself on that occasion to the prison of the said lady the queen of the *Fleet*, which said sum of 80 *l.* acknowledged by the said *I.* in form aforesaid, the said *I.* acknowledged to be made of his lands and chattels; and which said sum of 40 *l.* separately acknowledged by the said *E.* and *M.* in form aforesaid, the said *E.* and *M.* and each of them separately acknowledged to be made of their lands and chattels, and to be levied to the use and behoof of the said *E.* in form aforesaid, if it should happen that the said *I.* should make default in any of the premisses, and be convicted thereof in lawful manner: Which said recognizance the said justice afterwards, to wit, on the 30th day of *April* in this same term, by his own proper hands delivered here into court to be inrolled of record, &c.

Scire facias
on a recog-
nizance of
bail upon a
Habeas Cor-
pus cum cau-
sa in C. B.

ANNE, &c. To the sheriff of *Middlesex* greeting. *Whereas* *I. S. E. W.* of *London*, *Gent.* and *M. J.* of *London*, *Gent.* on the 19th day of *February* in the year of our Lord

1706,

1706, before *Robert Tracey, Esq;* one of the justices of our court of the Bench, at his chambers situate in *Serjeants-Inn* in *Fleet-street, London*, in their proper persons undertook, and each of them undertook, *to wit*, the said *I.* in the sum of 80 *l.* and the said *E.* and *M.* for themselves separately in the sum of 40 *l.* that the said *I.* should appear in our court before our justices at *Westminster* in his proper person, or by his attorney sufficient in the law, to the action or writ of one *E. S.* against him the said *I.* of a plea of debt upon demand 40 *l.* to be sued out and prosecuted in our same court before the end of two terms then next following, and to answer to the said *E.* in the plea aforesaid; and also if it should happen that judgment after the appearance of the said *I.* made in the same court should be given for the said *E.* then to satisfy the said *E.* of the debt and damages to be recovered or adjudged against the said *I.* in the plea aforesaid, or that he the said *I.* should render himself on that occasion to our prison of the *Fleet*, which said sum of 80 *l.* acknowledged by the said *I.* in form aforesaid, the said *I.* acknowledged to be made of his lands and chattels, and which said sum of 40 *l.* separately acknowledged by the said *E.* and *M.* in form aforesaid, the said *E.* and *M.* and each of them separately acknowledged to be made of their lands and chattels, and to be levied to the use and behoof of the said *E.* if it should happen
that

*Recognizance
inrolled.*

that the said *I.* should make default in any of the premisses, and be thereof lawfully convicted: *Which* said recognizance the same justice afterwards, *to wit*, on the 30th day of *April* in the 6th year of our reign, by his own proper hand delivered into the said court, to be inrolled of record, and it is inrolled there, as by the record thereof remaining in our same court manifestly appears of record: *And although* the said *E.* before the end of two terms next after the said time of the said recognizance made in form aforesaid, *to wit*, on the 23d day of *May* in the 6th year of our reign, sued out our certain original writ of and upon the said plea, out of our court of Chancery, the same court being at *Westminster* in our county of *Middlesex*, against the said *I.* returnable and returned in our court before our justices at *Westminster* on the morrow of the holy *Trinity* then next following, to which said original writ sued out and prosecuted by the said *E.* in form aforesaid, the said *I.* by *J. C.* then his attorney, appeared in our same court before our justices at *Westminster*, according to the form of the said recognizance, and in the same plea in our said court pleaded to issue; and in such manner it was proceeded thereupon in our same court before our justices at *Westminster*, that afterwards, *to wit*, in the term of the holy *Trinity* in the 6th year of our reign, before Sir *Thomas Trevor*, Knt. and his companions, our justices of the Bench
aforesaid,

aforesaid, the said *E.* by the consideration of the same court recovered against the said *I.* as well the said debt of 40 *l.* as ———, which then were adjudged to the said *E.* in our same court for her damages which she then had by occasion of the detaining that debt, whereof he is convicted, as manifestly appears by the record and process therein remaining in our court before our justices at *Westminster*: *Nevertheless* the said *I.* has not *Breach.* yet satisfied the said *E.* of the debt and damages aforesaid recovered in form aforesaid, nor has he yet rendered his body in execution of the said judgment to our prison of the *Fleet*, according to the form and effect of the said recognizance, as we have been informed by the said *E.* *And* because we would that those things which in our said court are rightly acted, should be demanded by a due execution; *We command* you, that by good and lawful men of your bailiwick you make known to the said *I. E.* and *M.* that they be before our justices at *Westminster* on the octave of *St. Hilary*, to shew if any thing they have or know to say for themselves, *to wit*, the said *I.* why the said 80 *l.* by him in form aforesaid acknowledged, of his lands and chattels, and the said *E.* why the said 40 *l.* acknowledged by him in form aforesaid, of his lands and chattels, and also the said *M.* why the said 40 *l.* also acknowledged by him in form aforesaid, of his lands and chattels, ought not to be made

made and levied to the use and behoof of the said *E.* according to the form of the said recognizance, if it shall seem expedient to them, and have there the names of those by whom you shall make known to them. And this writ witness, &c.

Scire facias by
administrator
against bail,
after judgment affirmed
in error.

GEORGE II. by the grace of God, of Great Britain, France and Ireland king, defender of the faith, &c. To the Sheriff of *Middlesex* greeting. Whereas *J. S.* late of *Forster Lane, London,* painter-stainer, and *W. W.* the younger, late of the *Bank Side Southwark,* iron-founder, lately, that is to say, in the term of *St. Hilary* in the 3d year of our reign, in our court of common pleas, before *Sir R. E. Knt.* and his companions, then our justices of our said court of common pleas at *Westminster,* acknowledged, and each of them did acknowledge to owe to *G. S.* the younger, by the name of *G. S.* the sum of 200*l.* which said sum of 200*l.* they the said *J. S.* and *W. W.* for themselves and their heirs willed and granted, and each of them for himself and his heirs did will and grant to be made of the lands and chattels of each of them, and to be levied to the use and behoof of the said *G. S.* upon this condition, That if judgment should happen to be given in our said court for the said *G. S.* against *K. E.* late of *Westminster* in your county *Esq;* in a plea of trespass upon the case upon promise, to the damage of the said *G.* of 120*l.* by the said *G. S.* against

the

the said *K.* in our said court brought, then the said *K.* should satisfy the said *G. S.* All the damages which to the said *G. S.* in our said court in the said plea of trespass upon the case should be adjudged, or should render his body on that occasion to our prison of the *Fleet*. And although the said *G. S.* in the same term before the aforesaid Sir *R. E. Knt.* and his companions, then our justices of our said court of common pleas at *Westminster*, by the consideration of our said court, recovered against the said *K.* 115 *l.* 10 *s.* which to the said *G.* in our said court were adjudged for his damages which he sustained by occasion of the said trespass on the case aforesaid, and whereof he is convicted, as by the record and proceedings thereupon, which in our court before us by virtue of our writ to correct errors brought by the said *K.* of and concerning the premisses, we lately caused to be brought in our court before us, and which in our court before us now remaining in all things affirmed may manifestly appear. And whereas the said *G.* afterwards, to wit, the 16th day of *March* in the year of our lord 1730, at *Westminster* aforesaid, died intestate, and after whose death administration of all and singular the goods and chattels, rights and credits which were the said *G.*'s at the time of his death by *W.* by divine providence archbishop of *Canterbury*, primate of all *England* and metropolitan, on the 6th day of *April* in the year

year of our Lord 1731, at *London* in due form of law was committed to G. S. father of the said G. S. the younger; as on the information of the said G. S. the father, we have been given to understand. And whereupon in our said court before us it was lately considered, That the aforesaid G. S. the father might have his execution against the said K. for the damages aforesaid; Yet the said K. hath not satisfied the said G. S. the younger, in his life-time, nor the said G. the father, since the death of the said G. the younger, the damages aforesaid; Neither hath the said K. surrendered his body on that occasion to the prison of the *Fleet*, as on the information of the said G. S. the father, we are given to understand. And because we are willing that those things which in like manner are required, and in our said court are rightly done should be brought to a due execution, We command you, that by honest and lawful men of your bailiwick you make known to the said J. S. and W. W. that they may be before our justices at *Westminster* on the morrow of the ascension of our Lord, to shew if any thing they know of or have to say for themselves, that is to say, the said J. S. why the said 200*l.* by him in form aforesaid acknowledged, should not be made upon his land and chattels, and the said W. W. the younger, why the said 200*l.* by him in form aforesaid acknowledged, should not be made upon his lands and chattels and

be

be levied according to the form of the said recognizance, if to them it seems expedient. And have you there the names of those by whom to them you give such notice, and this writ. Witness.

GEORGE II. by the grace of God, Scire facias king of *Great Britain, France and Ireland, against bail* defender of the faith, &c. To the sheriff of *Middlesex* greeting. Whereas *F. S.* late of, &c. *F. F.* late of, &c. and *T. P.* late of, &c. lately in our court, to wit, in the term of the *Holy Trinity* in the year of our reign, before Sir *R. E. Knt.* and his companions our justices of the bench at *Westminster*, acknowledged, and each of them did acknowledge to owe to *E. P.* and *W. F.* the sum of *38 l.* which said sum of *38 l.* they the said *T. S. F.* and *T. P.* for themselves and their heirs, willed and granted, and each of them for himself and his heirs did will and grant to be made of their and of each of their lands and chattels, and to be levied to the use and behoof of the said *E.* and *W.* upon this condition, that if judgment should happen to be given in our said court for the aforesaid *E.* and *W.* against *T. T.* late of, &c. in a certain plea of trespass on the case to the damage of the said *E.* and *W.* of *30 l.* prosecuted by the said *E.* and *W.* against the said *T. T.* in our said court. Then the said *T. T.* should satisfy all damages which should be adjudged to the said *E.* and *W.* in our said court, against

The whole damages and costs as taxed.

the said *T. T.* in the plea aforesaid, or should render his body on that occasion to the prison of the *Fleet*. And although the said *E. and W.* in the term of *Michaelmas* in the year of our reign, before the said Sir *R. E. Knt.* and his companions our justices of the bench at *Westminster* aforesaid, by the consideration of the said court recovered against the said *T. T.* 30*l.* which were adjudged to the said *E. and W.* in our said court, for their damages which they had by occasion of the said trespass, on the case whereof he is convicted, as by the said record and proceedings therein, in our said court remaining, plainly appears; Yet the said *T. T.* has not satisfied the said damages to the said *E. and W.* nor rendered his body, on the occasion aforesaid, to the prison of the *Fleet*, according to the form of the said recognizance, as from the information of the said *E. and W.* we are given to understand. And because we will that those things which in our said court are rightly acted and acknowledged be duly executed. We command you that by good and lawful men of your bailiwick you make known to the said *T. S. F.* and *T. P.* that they be before our justices at *Westminster* on the morrow of the purification of the blessed virgin *Mary*, to shew if any thing they have for themselves, or know to say, to wit, the said *T. S.* wherefore the said 38*l.* by him in form aforesaid acknowledged, ought not to be made of his lands and chattels; the said *F.* wherefore

Trespas.

483

fore the said 38^l. by him in form afore-
said acknowledged, ought not to be made
of his lands and chattels, and the said T. P.
why the said 38^l. by him in form afore-
said ought not to be made of his lands and
chattels, and levied to the use and behoof
of the said E. and W. according to the
form of the said recognizance, if to them
it shall seem expedient; And have you
there the names of them by whom you
shall make it known unto them, and this
writ. Witness Sir Robert Eyre Knt. the 23d
day of January in the year of our reign.
Eyre.

Trespas.

Middlesex, D. D. complaineth of T. D. *Trespas for*
to wit, D. in the custody of the *entering a*
marshal of the *Marshalsea* of our lord the *house.*
king, before the king himself being, of this,
that he the said T. on the 23d day of May
in the 6th year of the reign of our sove-
reign lord George II. now king of Great
Britain, &c. with force and arms, to wit,
with swords, staves and knives, broke
and entered into the dwelling house of
him the said D. at the parish of St Giles
in the fields in the county aforesaid; and
greatly disturbed him the said D. in his
quiet possession and occupation thereof,
and drove out and removed him the said D.
from his possession and occupation thereof.

I i 2

And

And the said *D.* being sodriven out and removed for a long time, to wit, for the space of 24 hours kept out; And other enormities to him then and there did, against the peace of our said sovereign lord the now king, and to the damage of the said *D.* 50*l.* And thereupon he bringeth suit, &c.

T. A. for the plaintiff. } Pledges, &c.
R. R. for the defendant.

For an assault. *Middlesex*, to wit, *M. W.* widow, complaineth of *T. D.* in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself being, of this, that the said *T.* on the 23d day of *May* in the 6th year of the reign of our sovereign lord *George II.* now king of *Great Britain*, &c. with force and arms, to wit, with swords, staves and knives, at the parish of *St. Giles in the fields* in the county aforesaid, made an assault on the said *M.* and the said *M.* then and there beat, wounded, and evilly intreated, so that her life was greatly despaired of, and other enormities to her then and there did, against the peace of our said sovereign lord the now king; and to the damage of the said *M.* 50*l.* And thereupon she bringeth suit, &c.

T. A. for the plaintiff. } Pledges, &c.
R. R. for the defendant.

Middlesex,

Middlesex, to wit, *M. B.* late of, &c. was attached to answer *J. S.* of a plea, wherefore he broke and entered the house of the said *J. S.* at the parish of *St. James Westminster* in the county of *M.* aforesaid, and then and there with force and arms, made an assault on *E.* the wife of the said *J.* and then and there beat, wounded and ill-treated, carnally knew and committed adultery with the said *E.* and did other injuries to him, to the great damage of the said *J.* and against the peace of our lord the present king, &c. And whereupon the said *J.* by *A. B.* his attorney, complains that the said *M.* on the 6th day of *October* in the second year of the reign of our sovereign lord *George II.* now king of *Great Britain*, &c. and at diverse other days and times between the said 6th day of *October* and the second day of *March* then next following, at the parish of *St. James Westminster* in the county of *M.* aforesaid, with force and arms broke and entered the house of the said *J.* and with force and arms made an assault on *E.* the wife of the said *J.* and then and there beat, wounded, ill-treated and committed adultery with the said *E.* whereby the said *J.* for the whole time aforesaid there intirely lost the comfort, love and affection of the said *E.* his wife, and then and there did other injuries to the said *J.* to the great damage of the said *J.* and against the peace of our said lord the king: Wherefore the said *J.* says that he is injured and

*Declaration in
trespass for
breaking the
plaintiff's
house, assault-
ing and lying
with his wife.
C. B.*

has damage to the value of 1000*l*. And thereupon he brings suit, &c.

Declaration in trespass for a criminal conversation with the plaintiff's wife. B. R. Middlesex, to wit, T. S. Esq; complains of J. F. Esq; in the custody of the marshal, &c. for that that the said J. on the 10th day of January in the 10th year of the reign of the lady A. late queen of Great Britain, &c. at the parish of St. Clement Danes in the said county of M. with force and arms, &c. made an assault on M. the wife of the said T. S. and then and there beat, wounded, and ill-treated the said M. and also ravished, and then and there led away the said M. and there retained and kept the said M. from the said T. contrary to the will of the said T. from that time until the 11th day of ——— whereby the said T. for the whole time aforesaid, there intirely lost the comfort, love and affection which the said T. might and could have had with his said wife; And then and there did other injuries to the said T. to the great damage of the said T. and contrary to the peace of the said late queen, and of our said lord the present king. Wherefore the said T. says that he is injured and has damage to the value of 10,000*l*. And thereupon he brings suit, &c. *

* This declaration was drawn by Mr. Reeve; the alterations were made by serjeant Pengelly, he would not let *carnaliter cognovit* stand, and said *rapuit* was as well left out, for if proved is felony and destroys the action; he said it was best in all these actions to lay the declaration as general as the case would allow: the words *alia enormia* letting the plaintiff into a large proof in these actions.

Thomson.

Trin. 16, 17 Geo. 2. Ro. 537.

Dorsetshire, **B**E it remembered, that on Memorandum
the 20th day of April of a declaration against an attorney.
in easter term in the 16th year of the C. B.
reign of our lord the king that now is,
R. W. Dr. of physick, came here by J. S.
his attorney, and exhibited to the justices
of our lord the king of the bench here,
his bill against W. B. Gent. one of the at-
torneys of the court of our said lord the
king of the bench here, present here in
court in his proper person, the tenor of
which said bill follows in these words, to
wit, To the justices of the lord the king
of the bench, Dorsetshire, R. W. Dr. of
physick, by J. S. his attorney, complains Bill against an attorney of C. B. in a plea of trespass and assault for criminal conversation with the plaintiff's wife.
of W. B. Gent. one of the attorneys of the
court of the lord the king of the bench,
present here in court in his proper person,
for that the said W. on the 1st day of May
in the year of our lord 1740, and at di-
verse other days and times between that
day and the 1st day of May in the year of
our lord 1742, with force and arms made
an assault upon M. the wife of the said R.
W. at S. in the said county, and her the
said M. then and there ravished, embraced
and carnally knew, whereby the said R.
lost and was deprived of the comfort and
society of his said wife, and other inju-
ries did to him, to the great damage of
the said R. W. and against the peace of

our lord the present king, &c. Wherefore the said R. says that he is injured, and hath sustained damage to the value of 1000*l*. And thereupon he prays remedy, &c. Pledges of prosecuting, to wit, J. D. and R. R.

Pledge.

Imparlance.

And the said W. B. in his proper person comes and defends the force and injury when, &c. and prays leave to imparle thereto here, until Friday next after the morrow of the Holy Trinity; and he has it, &c. The same day is given to the said R. W. here, &c. At which day comes here as well the said R. W. by his said attorney, as the said W. B. in his proper person. And the said R. W. requires that the said W. B. may answer his said bill, &c. And the said

Plea not guilty.

W. B. in his proper person defends the force and injury when, &c. And saith that he is in nothing guilty of the premisses above laid to his charge, as the said R. W. above complains against him; And of this he puts himself upon the country; And the said R. W. likewise. Therefore the sheriff is commanded, that he cause to come here on Wednesday next after three weeks of the Holy Trinity, twelve, &c. By whom, &c. Who neither, &c. To recognize, &c. Because as well, &c.

Issue.

Venire awarded.

Declaration in trespass, for breaking plaintiff's house, tarrying there and carrying away her goods. C. B.

Middlesex, to wit, G. F. late of, &c. was attached to answer unto M. B. spinster, in a plea, why he the said G. with force and arms the house of the said M. at the parish of ——— in the county aforesaid, did break and enter, and there without the

the leave, and against the will of the said *M.* a long time continued, and the goods and chattels of the said *M.* there lately found to the value of 10*l.* did take, seise, carry away, and to his own proper use convert and dispose, and other wrongs to the said *M.* did, to the great damage of the said *M.* and against the peace of our lord the now king, &c. And whereupon the said *M.* by *W. W.* her attorney complains, That the said *G.* with force and arms, &c. on the day of in the year of the reign of George II. king of Great Britain, &c. the house of the said *M.* at the parish aforesaid in the county aforesaid did break and enter, and there without the leave and against the will of the said *M.* continued a long time (to wit) for the space of 24 hours, and the goods and chattels, to wit, one feather bed, &c. of the said *M.* there lately found, to the value of the aforesaid 10*l.* did take, seise, carry away, and to his own proper use convert and dispose; and other wrongs, &c. to the great damage, &c. and against the peace, &c. Whereupon the said *M.* saith that she is injured and hath damage to the value of 10*l.* And thereupon she brings suit, &c.

Oxfordshire, to wit, *M. F.* late of, &c. Declaration in trespass, for breaking plaintiff's close, treading down the grass, &c. laid specially. C. B.
 was attached to answer to *S. S.* of a plea, wherefore he the said *M.* with force and arms the close of the said *S.* in the parish of *Waterperry* in the said county of *O.* broke and entered, and the grass late growing there to

to the value of 5 *l.* trod down and consumed with his feet and the feet of his servants, by his and their walking thereon, and other grafs late growing there of the said *S.* to the value of 5 *l.* trod down and consumed with horses, oxen, cows and hogs, and other grafs of the said *S.* late growing there, to the value of 5 *l.* with carts and carriages trod down and consumed, and the earth and soil thereof tore up and plowed, and six cart-loads of flooded grafs laid down, unloaded and placed in the said close of the said *S.* and permitted the said flooded grafs to continue there for a long time, and also another close of the said *S.* in the parish aforesaid broke and entered, and the grafs there late growing to the value of 10 *l.* with his feet and the feet of his servants, by his and their walking thereon, and with horses and dogs, by hunting in the said close, trod down and consumed; And the hedges, fences, gates and ditches of the said *S.* late being there, to the value of 10 *l.* broke down, destroyed, laid to the ground and filled up; And did him other wrongs to the great damage of the said *S.* and against the peace of our sovereign lord the king. *And whereupon the said S. by E. R. his attorney complains, That the said M. on the 20th day of July in the year of our lord 1736, at the parish of W. in the said county of O. with force and arms broke and entered a close of the said S. containing 10 acres, called*

Hogbill,

Trespass.

491

Hogbill, in the said parish of *W.* and the
grafs of the said *S.* late growing there, to
the value, *£c.* trod down and consumed
with his feet and the feet of his servants,
by his and their walking thereon, and fed
on, trod down and consumed the said
grafs with horses, oxen, cows and hogs,
and other grafs of the said *S.* late growing
there, to the value, *£c.* with carts and
carriages trod down and consumed, and
the earth and soil thereof then and there
tore and plowed up with the said carts
and carriages, and six cart-loads of flooded
grafs then and there laid down, unloaded
and placed and permitted the same grafs
so laid down and placed, to continue in
the said close for the space of one month
from thence following, and also continuing *Continuando.*
the said trespass as to the said treading down,
consuming and feeding on the grafs, and
also tearing and plowing up the earth and
soil of the said close, at diverse days and
times from the said 20th day of *July* in
the year aforesaid to the 20th day of
October following; And also that he the
said *M.* on the 1st day of *April* in the
year of our lord 1733, at the parish of
W. aforesaid, broke and entered another
close of the said *S.* there being, called the
Ewe ground, and the grafs of the said *S.*
then late growing there, to the value, *£c.*
trod down and consumed with his feet
and the feet of his servants, by his and
their walking thereon, and also with horses
and dogs, by their running thereon, in his
the

Continuando.

*Plea as to
part Not
guilty.*

the said *M.* and his servants then and there hunting with the said horses and dogs in the said last mentioned close, and then and there broke down and destroyed by the said hunting of the said *M.* and his servants, with the said horses and dogs, the hedges, fences, gates and ditches of the said *S.* then and there, to wit, 20 perches of hedges and 20 perches of fences, and 20 perches of ditches, and five gates then and there being, of the value, *£c.* then and there broke, destroyed, laid to the ground, and filled up, continuing the said last mentioned trespass at divers days and times from the said 1st day of *April* in the said year of our Lord 1733, to the day of the issuing forth of the original writ of the said *S.* and then and there did him other wrongs, *£c.* to the great damage, *£c.* against the peace, *£c.* Whereupon the said *S.* declares he is injured and damaged to the value of 30*l.* And thereof he brings suit, *£c.*

And the said *M.* by *H. H.* his attorney comes and defends the force and injury when, *£c.* *And as to* the coming with force and arms, and whatever is against the peace of his said majesty, and all the said trespasss above supposed to be done, except the breaking and entering of the said close called *Hogbill*, in which, *£c.* and the treading down and consuming of the grass aforesaid there growing with his feet and the feet of his servants, by walking thereon, and the feeding on, treading down

down and consuming the grass aforesaid there growing with the said horses, and the treading down and consuming other the grass there growing with the said carts and carriages, and the tearing and plowing up with the said carts and carriages the earth and soil aforesaid there, says that he is not guilty thereof as the said S. hath above complained against him; And thereupon he puts himself upon the country; And the said S. doth so likewise: *Issue.*

And as to the breaking and entering the said close called *Hoghill*, in which, &c. and the treading down and consuming of the grass aforesaid there growing with his feet and with the feet of his servants, by walking thereon, and the feeding on, treading down and consuming the grass aforesaid there growing with the said horses, and the treading and consuming other the grass aforesaid there growing with the said carts and carriages, and the tearing and plowing up with the said carts and carriages the earth and soil aforesaid there, the said M. says that the said S. ought not therefore to have his said action against him, because he says, that the said close called *Hoghill*, in which the said trespass is above supposed to be done, at the said time when, &c. was and is a piece of meadow containing 10 acres, parcel of a certain common meadow called *Hoghill* in the parish of *W.* aforesaid. And the said M. further says, that long before the said time when, &c. *E. R. Esq;* was seised in his as he could.

As to the residue, that the locus in quo, &c. was parcel of a common meadow, that E. R. long before, &c. was seised in fee of the locus in quo, &c. and of another parcel of ground in the same meadow, to which he had no way but over the locus in quo, &c. that E. R. demised the said other parcel of ground to the def. who therefore justifies in using his way to the same, doing as little damage

his demesne as of fee as well of the said close in which, &c. parcel, &c. as of another parcel of the said common meadow, containing by estimation two acres, with the appurtenances, at one and the same time; And being so seised thereof, the said *E.* had not any way to the said parcel of the said meadow containing two acres, except from *W.* aforesaid in the county of *B.* through and over the said close in which, &c. parcel, &c. into the said parcel of the said meadow containing by estimation two acres, and back again from that parcel of the said meadow into, through and over the said close in which, &c. to *W.* aforesaid, for the use and enjoyment of the said parcel of the said meadow containing by estimation two acres; And the said *E.* being so seised of the said parcel of the said meadow containing by estimation two acres, with the appurtenances, as aforesaid, he the said *E.* not then having any way to the said parcel of the said meadow containing two acres except from *W.* aforesaid in the said county of *B.* through and over the said close in which, &c. parcel, &c. into the said parcel of the said meadow containing by estimation two acres, and back again from that parcel of the said meadow into, through and over the said close in which, &c. to *W.* aforesaid, for the use and enjoyment of the said parcel of the said meadow containing by estimation two acres, before the said time when, &c. to

wit, on the 26th day of *March* in the year of our Lord 1736 aforesaid, at the parish aforesaid, demised to the said *M.* the said parcel of the said common meadow containing by estimation two acres, with the appurtenances; To have and to hold to the said *M.* from thence at the will of the said *E.* and *M.* by virtue of which said demise the said *M.* entered into the said parcel of the said meadow so demised to him as aforesaid, with the appurtenances, and has been from thenceforth hitherto possessed thereof, and being so possessed, he the said *M.* of necessity had and ought to have a way from *W.* aforesaid into, through and over the said close in which, *Ec.* parcel, *Ec.* into his said parcel of his said meadow, and back again from his said parcel of his said meadow into, through and over the said close in which, *Ec.* parcel, *Ec.* to *W.* aforesaid, for the necessary use and enjoyment of the said parcel of the said common meadow; And therefore he the said *M.* at the said several times when, *Ec.* went with his said carts and carriages in the said declaration mentioned, drawn by his said horses therein also mentioned, in the said way from *W.* aforesaid into, through and over the said close in which, *Ec.* parcel, *Ec.* into his said parcel of the said meadow, and back again from his said parcel of the said meadow into, through and over the said close in which, *Ec.* parcel, *Ec.* for the fetching, taking and carrying of
of

of the hay and grafs of the said *M.* growing, arising and made in his said parcel of the said common meadow, with his said horses, carts and carriages, by himself and his said servants in the said way, as it was lawful for him; *And* in so doing he the said *M.* and his said servants necessarily trod down and consumed with their feet in walking in the said way a little of the grafs aforesaid, then growing in the said close in which, &c. parcel, &c. and the said horses of the said *M.* in their passing in the said way through the said close in which, &c. parcel, &c. for the cause aforesaid, against the will of the said *M.* did snatch and eat, and necessarily trod down and consumed a little of the grafs aforesaid there growing, doing as little damage as might be; and the said *M.* did necessarily in using his said way tread down and consume on that occasion a little other grafs there growing with the said carts and carriages, and tore and plowed up with his said carts and carriages on that occasion the earth and soil aforesaid there, doing as little damage there on that occasion as he could; *Which* are the breaking and entering of the said close called *Hog-hill* in which, &c. and the treading down and consuming of the grafs aforesaid there growing with his feet and the feet of his servants, by walking thereon, and the feeding on, treading down and consuming the grafs aforesaid there growing with the said horses, and the treading down and consuming

suming other the grafs aforefaid there growing with the faid carts and carriages, and the tearing and plowing up with the faid carts and carriages the earth and foil aforefaid there, of which the faid S. hath above complained againft him; *And* this he is ready to verify: *Wherefore* he prays judgment if the faid S. ought therefore to have his faid action againft him, &c.

And the faid S. as to the faid breaking and entering of the faid clofe called *Hogbill*, in which, &c. and the treading down and confuming of the grafs aforefaid there growing, with his feet and the feet of his fervants by walking thereon, and the feeding on, treading down and confuming the grafs aforefaid there growing with the faid carts and carriages, and the tearing and plowing up with the faid carts and carriages the earth and foil aforefaid there, *Replies*, that he ought not to be precluded from having his faid action to be maintained againft the faid M. for the fame, by any thing above pleaded by him thereto, *because* he the faid S. fays, that the faid M. at the faid time in which, &c. at the parifh of W. aforefaid, broke and entered the faid clofe called *Hogbill*, in which, &c. and the faid grafs of the faid S. late growing there, trod down and confumed with his feet and the feet of his fervants, by his and their walking thereon, and fed on, trod

Replication,
de injuria
fua propria.

down and consumed the said grass with the said horses, and the said other grass of the said *S.* late growing there, with carts and carriages trod down and consumed, and the earth and soil thereof then and there tore and plowed up with the said carts and carriages, of his own wrong, without such cause by him the said *M.* above in his said plea alledged; And this the said *S.* prays may be inquired of by the country; And the said *M.* does so likewise. Therefore the sheriff is commanded, that he cause to come here from the day of the holy *Trinity* in three weeks, 12, &c. And who neither, &c. To recognize, &c. Because as well, &c.

Issue.

Venire
awarded.

*Declaration
in trespass for
entering pl.'s
free chase and
free warren,
bunting and
killing game,
&c. C. B.*

Cumberland, *F. F.* late of, &c. was at-
to wit, *F.* tached to answer to *W.*
H. in a plea wherefore he with force and
arms entered into the free chace of the
said *W.* at *M.* in the county aforesaid, and
without his licence and consent in the same
did hunt, and did take, kill and carry a-
way hares, conies, pheasants and partrid-
ges; and also wherefore he with force and
arms entered into the free warren of the
said *W.* at *M.* aforesaid, and without his
licence and consent there did hunt and
take, kill and carry away other hares, co-
neys, pheasants and partridges, and other
injuries to him did, to the great damage
of the said *W.* and against the peace
of our lord the king; And whereupon
the said *W.* by *T. B.* his attorney,
complains,

complains, *that* the aforefaid *F.* on the ——— day of ——— in the ——— year of the reign of his prefent majefty, and on divers other days and times between that day and the 1st day of *March* in the ——— year of the reign of his faid majefty, with force and arms, &c. entered into the free chace of the faid *W.* at *M.* aforefaid, and without his licence and consent did in the fame hunt, and did take, kill and carry away hares, *to wit*, 20 hares, conies, *to wit*, 40 conies, pheafants, *to wit*, 20 pheafants, and partridges, *to wit*, 20 partridges; And alfo that the faid *F.* on the faid feveral days and times aforefaid, with force and arms, &c. entered into the free warren of the faid *W.* at *M.* aforefaid, and without his licence and consent there did hunt, and did take, kill and carry away other hares, *to wit*, 20 other hares, conies, *to wit*, 40 other conies, pheafants, *to wit*, 20 other pheafants, partridges, *to wit*, 20 other partridges; and other injuries, &c. to the great damage, &c. and againft the peace, &c. Whereupon the faid *W.* faith, that he is prejudiced, and hath received damage to the value of 20*l.* And thereupon he bringeth fuit, &c.

Oxfordshire, } *T. H.* late of, &c. was at- *Declaration*
to wit, } *T.* reached to answer *T. B.* in trespafs for
of a plea, *Wherefore* with force and arms he cutting down
the trees of the faid *T. B.* at *C.* aforefaid *plt.'s trees,*
growing, to the value of 30*l.* felled and carrying away
the timber,
cut &c. *C. B.*

cut down, and the timber and wood therefrom coming and arising took, carried away and converted to his own proper use, and the underwood and bushes of him the said *T. B.* at *C.* aforesaid growing, of the value of other 30*l.* cut down and carried away, and other enormities to him did, to the great damage of the said *T. B.* and against the peace of our lord the now king, *&c.* And whereupon the said *T. B.* by *R. F.* his attorney complains, *That* the said *T. H.* on the 1st day of *January* in the year of our Lord 1732, and on several other days and at several other times between that day and the 23d day of *April* in the year of our Lord 1737, with force and arms, *&c.* the trees of him the said *T. B.* *to wit*, 100 oaks, 100 ashes, 100 elms, 100 beeches, and 100 maples, growing in several closes, called *K. P. B.* *&c.* at *C.* aforesaid, to the value, *&c.* felled and cut down, and the timber and wood, (*to wit*) 200 cart-loads of timber, and 200 cart-loads of wood) therefrom coming and arising, took, carried away and converted to his own proper use, and the underwood and bushes of him the said *T. B.* (*to wit*, 200 cart-loads of underwood and 200 cart-loads of bushes) growing in the said closes, of the value, *&c.* cut down and carried away; and other enormities, *&c.* to the grievous damage, *&c.* and against the peace, *&c.* Whereby the said *T. B.* says, he is detrimented and has sustained damage

mage to the value of 40*l.* And therefore he brings this suit, &c.

Leicestershire, } *H.* R. late of, &c. was *Declaration*
 to wit, } attached to answer *in trespass*
B. D. in a plea wherefore with force and *for shooting a*
 arms, a certain greyhound bitch, and a *greyhound, &c.*
 certain other bitch of the said *B.* of the *C. B.*
 price of 10*l.* at *M.* aforesaid in *M.* aforesaid in the county aforesaid, with a gun he shot at and killed, whereby the said *B.* not only lost the said bitches, but also certain young whelps, *to wit,* five young whelps of the said greyhound bitch, and certain young whelps, *to wit,* five young whelps of the said other bitch, which died for want of the said bitches to suckle them, *to wit,* at *M.* aforesaid, and a certain other greyhound bitch, and a certain other bitch of the said *B.* late found at *M.* aforesaid, of the price of 10*l.* he shot at, hit, struck, smote and wounded, by means whereof the last mentioned two bitches afterwards at *M.* aforesaid died, whereby the said *B.* not only lost the said two last mentioned bitches, but also certain other young whelps, *to wit,* five other young whelps of the said last mentioned greyhound bitch, and certain other young whelps, *to wit,* five other young whelps of the other of the two last mentioned bitches, which afterwards died for want of the two last mentioned bitches to suckle them, *to wit,* at *M.* aforesaid, and did other wrongs to the said *B.* to the

great damage of the said *B.* and against the peace of our sovereign lord the king that now is, &c. And whereupon the said *B.* by *J. B.* his attorney complains, that the said *H.* on the 15th day of *January* in the year of our Lord 1736, with force and arms, &c. a certain greyhound bitch and a certain other bitch of the said *B.* of the price of 10*l.* then found at *M.* aforesaid, with a gun he shot at and killed, whereby the said *B.* not only lost the said bitches, but also certain young whelps, *to wit*, five young whelps of the said greyhound bitch, and certain young whelps, *to wit*, five young whelps of the other of the said bitches, which afterwards, *to wit*, the same day and year at *M.* aforesaid, died for want of the said bitches to suckle them; And a certain other greyhound bitch, and a certain other bitch of the said *B.* then found at *M.* aforesaid, of the price of 10*l.* shot at, hit, struck, smote and wounded, by means whereof the last mentioned two bitches afterwards, *to wit*, the same day and year, at *M.* aforesaid died; whereby the said *B.* not only lost the two last mentioned bitches, but also certain other young whelps, *to wit*, five young whelps of the last mentioned greyhound bitch, and certain other young whelps, *to wit*, five young whelps of the other of the two last mentioned bitches, which afterwards, *to wit*, the same day and year, died for want of the two last mentioned bitches to suckle them, *to wit*,
at

at *M.* aforefaid, and did other wrongs to the faid *B.* to the great damage of the faid *B.* and againft the peace of our faid fovereign lord the king that now is; Whereby the faid *B.* faith, that he is injured and damnified to the value of 10*l.* And thereupon he brings fuit, &c.

And the aforefaid *H.* by *S. S.* his attorney comes and defends the force and in jury when, &c. *Plea as to part, Not guilty.* And as to the coming

with force and arms, and the whole trespafs aforefaid above fupposed to be done, except the shooting at and killing of the faid greyhound bitch in the faid declaration firft mentioned, faith, that he is not guilty; And of this he puts himfelf upon the country; And the faid *B.* likewise, *Issue.*

&c. — And as to the shooting at and killing of the faid greyhound bitch in the faid declaration firft mentioned, above fupposed to be done, the aforefaid *H.* faith, that the faid *B.* ought not to have his aforefaid action thereof againft him, because he faith, that Sir *W. D. Bart.* long before the faid time when, &c. and at the faid time when, &c. was and ftill is poffeffed of and in a certain ancient park called *B. Park* in *M.* aforefaid, in which faid park long before the faid time when, &c. and at the fame time when, &c. were great numbers of deer, of which park the aforefaid *H.* before the faid time when, &c. and at the faid time when, &c. was keeper, and had the care and cuftody thereof; and the faid Sir *W.* being fo as

As to the refidue, that the greyhound ufed to haunt a park, and to hunt, &c. the deer, and being at the time when, &c. there for that purpofe, deft. as park-keeper juftifies the shooting her.

aforesaid possessed of the said park, the said greyhound bitch at divers times before the said time when, *Ec.* was used to haunt the said park, and to hunt, chase and drive the deer there, in order to bite, wound and kill them, to the great hurt and damage of the said deer; and at the said time when, *Ec.* was in the aforesaid park for the purpose aforesaid; whereupon the aforesaid *H.* as keeper and servant of the aforesaid Sir *W.* and by his command at the said time when, *Ec.* in the said park for the preservation of the said deer there, did shoot at and kill the said greyhound bitch there, as it was lawful for him to do; which is the same shooting at and killing of the said greyhound bitch in the said declaration first mentioned, whereof the said *B.* doth above in that behalf complain against him: And this he is ready to verify: Whereupon he prays judgment if the said *B.* ought to have his aforesaid action thereof against him, *Ec.*

*Replication,
that he did it
de injuria sua
propria, absq;
cuij causa.*

And the said *B.* as to the said plea of him the said *H.* as to the shooting at and killing of the said greyhound bitch in the said declaration first mentioned by him the said *H.* committed above pleaded, in bar says, that he by any thing above alleged by the said *H.* in pleading ought not to be barred from having his said action thereof against him, because he says, that true it is, that the said Sir *W. D. Bart.* long before the said time when, *Ec.* and at the said time when, *Ec.* was and still

still is possessed of and in the said park called *B. Park* in *M.* aforesaid, and that within the said park long before the said time when, &c. and also at the same time when, &c. there were a great number of deer, and that the said *H.* before the said time when, &c. and at the said time when, &c. was keeper, and had the care and custody thereof, in manner and form as the said *H.* hath above by his pleading alledged: But the said *B.* further saith, that the said *H.* upon the said 15th day of *January* in the said year of our Lord 1736, at *M.* aforesaid, of his own wrong, and without the rest of the cause by him above alledged, with a gun shot at and killed the said greyhound bitch of the said *B.* in the said declaration first above mentioned, as the said *B.* above thereof complains against him; And this he prays may be inquired of by the country: And the said *H.* likewise, &c. *There-fore* as well to try this issue as the said other issue between the parties aforesaid above joined, the sheriff is commanded, &c. *Issue. Venire awarded.*

Herefordshire, } *W. H.* late of, &c. and *M.* Declaration
to wit, } his wife, were at- in trespass a-
tached to answer *M. P.* widow, of a plea, gainst baron
wherefore the said *M.* the wife of the said and feme for
W. with force and arms, at *Ross* in the said taking away
county of *H.* took and carried away the corn in the
in the straw of the said *M. P.* of the value of straw by the
30*l.* there lately found, and converted and wife, and
disposed thereof to the use of the said *W.* converting it
and *C. B.* to the bus-
band's use.

and other injuries to her did, to the great damage of the said *M. P.* and against the peace of our lord the present king. *And* whereupon the said *M. P.* by *J. B.* her attorney, complains that the said *M.* the wife of the said *W.* on the 20th day of *August* in the year of our lord 1736, with force and arms, at *Ross* aforesaid, the corn of the said *M. P.* in the straw, that is to say, 50 cart-loads of wheat in the straw, 50 cart-loads of rye in the straw, and 50 cart-loads of mongcorn in the straw of the said *M. P.* of the value, *£c.* there lately found, took, carried away, and converted and disposed thereof to the use of the said *W.* and other injuries, *£c.* to the great damage, *£c.* and against the peace, *£c.* Wherefore she saith that she is injured and hath damage to the value of 40*l.* And therefore she brings this suit, *£c.*

*Plea, as to
part not guilty.*

And the said *W.* and *M.* his wife, by *J. K.* their attorney, come and defend the force and injury when, *£c.* *And* as to the coming with force and arms and whatever is against the peace of his present majesty, say that the said *M.* the wife of the said *W.* is not guilty thereof as the said *M. P.* hath above complained against them; *And* thereupon they put themselves upon the country; *And* the said *M. P.* does so likewise. *And* as to the residue of the said

Issue.

*As to the residue,
that the
plaintiff licen-
ced her to take
away the corn,
&c.*

trespass above supposed to be done by the said *M.* the wife of the said *W.* the said *W.* and *M.* his wife say, that the said *M. P.* ought not therefore to have her said action

tion

tion againſt them, becauſe they ſay that the ſaid *M. P.* before the ſaid time when, &c. to wit, on the 19th day of *Auguſt* in the year of our lord 1736 aforeſaid, at *Rofs* aforeſaid, licenced the ſaid *M.* the defendant to take and carry away the ſaid corn, and to convert and diſpoſe thereof to the uſe of the ſaid *W.* By virtue of which ſaid licence ſhe the ſaid *M.* the defendant afterwards, to wit, at the ſaid time when, &c. took and carried away the ſaid corn and converted and diſpoſed thereof to the uſe of the ſaid *W.* her husband, as it was lawful for her to do; which are the reſidue of the ſaid trespafs, of which the ſaid *M. P.* hath above complained againſt them; And this they are ready to verify: Wherefore they pray judgment if the ſaid *M. P.* ought therefore to have their ſaid action againſt them, &c.

And the ſaid *M. P.* as to the ſaid plea of *Replication*, de the ſaid *W.* and *M.* his wife, as to the re- injuria ſua ſidue of the trespafs aforeſaid, done by propria. the ſaid *M.* the wife of the ſaid *W.* above in bar pleaded, ſaith that ſhe the ſaid *M. P.* by reaſon of any thing by the ſaid *W.* and *M.* in the plea aforeſaid above alleged, ought not to be precluded from having her action aforeſaid thereof againſt them, becauſe ſhe the ſaid *M. P.* ſaith that the ſaid *M.* the wife of the ſaid *W.* on the day and year in the ſaid declaration mentioned, of her own wrong, at *Rofs* aforeſaid, the ſaid corn in the ſtraw of the ſaid *M. P.* there lately found, took and carried

Traverse.

ried away and converted and disposed thereof to the use of the said *W.* in manner and form as the said *M. P.* hath above complained; *Without this* that the said *M. P.* licenced the said *M.* the defendant to take and carry away the said corn, and to convert and dispose thereof to the use of the said *W.* her husband, in manner and form as the said *W.* and *M.* his wife in the said plea have above alledged; And this she is ready to verify: Wherefore as the said *W.* and *M.* his wife have above acknowledged the committing of that trespass by the said *M.* the defendant, the said *M. P.* prays judgment and her damages aforesaid, occasioned by the committing of that trespass, to be adjudged to her, &c.

Rejoinder.

And the said *W.* and *M.* his wife say as before, that the said *M. P.* licenced the said *M.* the defendant to take and carry away the said corn, and to convert and dispose thereof to the use of the said *W.* her husband, as the said *W.* and *M.* his wife in their said plea have above alledged; And thereupon they put themselves upon the country; *And* the said *M. P.* likewise, *Therefore, &c.*

Issue.

Declaration in trespass by the lord of a manor, for taking away an astray. C. B.

Yorkshire, A. B. late of, &c. was attached to answer *C. D. Esq;* in a plea, wherefore the said *C.* ought to have in his manor of *C.* in the county aforesaid, and the said *C.* and all other lords of the manor aforesaid for the time being, from time out of mind hitherto have used and accustomed

accustomed to have all estrays coming within the manor aforesaid, and precinct thereof, as belonging and appertaining to the same manor, the said *A.* with force and arms did take, lead away and detain diverse cattle of the price of 8*l.* found within the manor aforesaid, and as estrays belonging to him the said *C.* as lord of the said manor, for the reason aforesaid; and other injuries to him did, to the great damage of the said *C.* and against the peace of our lord the king that now is. *And* whereupon the said *C.* by *W. R.* his attorney complains, *That whereas* he the said *C.* ought to have in his said manor of *C.* and he the said *C.* and all other lords of the manor aforesaid for the time being, from time out of mind hitherto have used and been accustomed to have all estrays coming within the manor aforesaid and precinct thereof, as belonging and appertaining to the same manor; the said *A.* the day of in the 11th year of his said majesty's reign, with force and arms did take, lead away and detain one mare of the price of 7*l.* then found within the manor aforesaid, that is to say, at *C.* aforesaid, and as an estray belonging to him the said *C.* as lord of the same manor for the reason aforesaid. *And* the said *A.* afterwards, that is to say, on the day of in the said 11th year of his said majesty's reign, with force and arms, did take, lead and detain two sheep of the price of 20*s.* then found within the manor aforesaid,

aforesaid, that is to say, at C. aforesaid, and for the reason aforesaid, as estrays belonging to him the said C. as lord of the manor aforesaid; and other injuries, &c. to the great damage, &c. and against the peace, &c. Whereupon the said C. saith that he is injured and damnified to the value of 40*l*. And thereof he bringeth suit, &c.

*Declaration in
trespass, clau-
sum fregit,
treading down
the grass, and
cutting down
and carrying
away trees.
B. R.*

Kent, to wit, M. W. complains against *J. N.* in custody of the marshal of the *Marshalsea* of our lord the king, before the king himself, for this, to wit, that the said *J.* on the 10th day of *October* in the year of our lord 1744, and on diverse other days and times between that day and the 25th day of *December* then next following, with force and arms, &c. the closes of the said *M.* that is to say one close called the *Garden*, one other close called the *Morsery ground*, and one other close called the *Fifteen acres*, and one other close of the said *M.* at the parish of *St. Nicholas* and in *Deptsford* in the said county he broke and entered, and the grass of the said *M.* there lately growing, of the value of 40*s*. with his feet in walking trod down and consumed, and the trees of the said *M.* that is to say 500 ash trees, 500 elm trees, 500 yew trees, 500 apricot trees, 500 peach trees, 500 nectarine trees, 500 apple trees, 500 pear trees, 500 plumb trees, 500 cherry trees, 500 gooseberry trees, and 500 curran trees of the value of 200*l*. there lately growing, felled, cut down, dug

dug up, took and carried away and converted and disposed thereof to his own use; and other injuries to her then and there did, against the peace of our lord the present king, and to the damage of the said *M.* 300*l.* And thereof she brings suit, &c. Pledges, &c.

Hil. 36, 37 *Car.* 2. C. B. 1742.

Torkshire, *E.* L. late of *Marr* in the county afore-
 said widow, was attached to answer *G. N. Gent.* in a plea, wherefore with force and arms, into the manor of *Marr*, with the appurtenances, and into 20 messuages, 10 cottages, 400 acres of arable land, 400 acres of meadow, and 400 acres of pasture, with the appurtenances of the said *G.* situate, lying and being in *Marr*, *Bentley* and *Thorpe* in *Balne*, she broke and entered, and him the said *G.* from the possession and occupation of the manor and tenements afore-
 said, with the appurtenances, from the second day of *October* in the 32d year of the reign of our lord the present king, until the 4th day of *March* in the 35th year of the reign of our said lord the present king, expelled and amoved; and she the said *E.* the whole profits of the manor and tenements afore-
 said, from the said 2d day of *October* in the 32d year afore-
 said until the 4th day of *March* in the 35th year afore-
 said, to the use of the said *E.* had and received;
 whereby

Declaration in trespass for the recovery of mesne profits.
 C. B.
Brownl. 493.

whereby the said G. the whole profit, benefit and advantage of the manor and tenements aforesaid by the whole time aforesaid lost, and the said G. from the receipt of the profits of the manor and all the tenements aforesaid by reason thereof was hindered, and other injuries to him did, to the great damage of the said G. and against the peace of our lord the present king, &c. And whereupon the said G. by W. D. his attorney complains that the said E. on the 2d day of *October* in the 32d year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. with force and arms, &c. into the manor of [*as before to*] was hindered, and other injuries, &c. to the great damage, &c. and against the peace, &c. Whereupon he says, that he is the worse and has damage to the value of 600*l.* And thereof he brings suit, &c.

Plen.

*Not guilty to
part.*

And the said E. by C. D. her attorney, comes and defends the force and injury when, &c. And as to coming with force and arms, or whatever that is against the peace of our said lord the present king, and also the whole trespass aforesaid, except in one messuage, 60 acres of land, 40 acres of pasture, and 20 acres of meadow, with the appurtenances in *Marr* aforesaid, parcel of the tenements in the declaration aforesaid specified; And as to any trespass in the said messuage, 60 acres of land, 40 acres of pasture, and 20 acres of meadow, with the appurtenances, in
and

and before the 23d day of *January* in the 32d year of the reign of our sovereign lord *Charles II.* now king of *England, &c.* she the said *E.* says that she is not guilty thereof; And of this she puts herself upon the country; And the said *G.* likewise, &c. *Issue.*
 And as to the said trespass in the said one messuage, 60 acres of land, 40 acres of pasture, and 20 acres of meadow with the appurtenances above supposed to be done, the said *E.* says, that the said *G.* ought not to have or maintain his said action thereof against her, because she says that long before the said *G.* had any thing in the tenements last mentioned, with the appurtenances, to wit, on the 10th day of *June* in the year of our lord 1674, one *E. L. Gent.* was seised of the tenements with the appurtenances last mentioned, in his demesne as of fee. And the said *E.* being so thereof seised before the said time in which, &c. to wit, on the 10th day of *August* in the year of our lord 1674, at *Marr* in the county aforesaid, made his testament and last will in writing, and thereby willed and devised the said tenements with the appurtenances to *E. L.* now the wife of *Theophilus* earl of *Huntingdon*, and *M. L.* deceased, late the wife of *Robert* earl of *Scarsdale*, and to their heirs for ever; And afterwards, to wit, on the day and year last mentioned, there died seised of the said tenements, with the appurtenances in form aforesaid. After
As to the rest due.
That long before plaintiff had any thing in the tenements, one E. L. was seised thereof in fee, and devised them to E. wife of T. earl of H. and M. late wife of R. earl of S. and their heirs for ever.
E. L. dis seised.
After E. and M. whose

whose death, to wit, on the 24th day of *January* in the 32d year aforesaid, the said *B.* and *M.* into the said tenements, *E. marries T.* with the appurtenances last mentioned, entered, and where thereof seised in their demesne as of fee, by virtue of the said devise; and being so thereof seised, the said *E.* then at *Marr* aforesaid took for her husband the said *Theophilus*, earl of *Huntingdon*, and the said *M.* then and there took for her husband the said *Robert*, earl of *Scarsdale*, whereby the said earl of *Huntingdon* and *E.* in the right of the said *E.* and the said earl of *S.* and *M.* in the right of the said *M.* on the said 24th day of *January* in the year aforesaid were seised of the tenements aforesaid last mentioned, with the appurtenances, in their demesne as of fee. *And* the said *G.* claiming the said tenements, with the appurtenances, by colour of a certain deed of feoffment to him and his heirs thereof made by the said *E. L.* before the day of the making the said testament, when nothing of the said tenements, with the appurtenances, ever passed into the possession of the said *G.* by the said deed of feoffment, after the death of the said *E. L.* to wit, on the 24th day of *January* in the 32d year aforesaid entered into the same tenements with the appurtenances. Upon which said possession of the said *G.* thereof the said *E. L.* now defendant, by the command of the said earl of *H.* and earl of

E. marries T.
earl of H.

M. marries
R. earl of S.

Colour given to
the plaintiff,
who enters.

Defendant by
command of
the earl of H.
and the earl of
S. enters on
plaintiff.

3
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be
of
la

of S. on the same 24th day of January into the said tenements last mentioned, with the appurtenances, re-entered, and the said G. from the possession and occupation of the same tenements, with the appurtenances, then expelled and amoved; and the profits of the same tenements last mentioned from thence for all the residue of the said time in the said declaration mentioned had and received, as she well might, which are the same residue of the said trespass, whereof the said G. above now complains; And this she is ready to verify: Wherefore she prays judgment if the said G. ought to have or maintain his said action thereof against her, &c.

And the said G. says that the said E. *Replication,* ought not to be admitted to the plea in *defendant ad* bar above pleaded, as to the said mesuage *placitum præd'* 60 acres of land, 40 acres of pasture, and *admitti non* 20 acres of meadow, because he says that *debet.* after the said time in the said declaration mentioned, in which the said trespass in the said declaration above is supposed to be done by the said E. heretofore, to wit, *In Hill. 32* in the term of St. Hilary in the 32d and *33 Car. II.* 33d years of the reign of our sovereign lord Charles II. now king of England, &c. in the court of our said lord the present *Plaintiff as* king before the then justices of our said *lessee of B. G.* lord the king of the bench (the same court *and A. his* being then at Westminster in the county *wife brought* of M.) the said E. by the name of E. L. *ejectment a-* gainst *defen-* late of Marr widow, and one W. H. G. G. *dant and six* *R. H. others.*

R. H. M. V. J. H. and J. S. were attached to answer the said G. N. in a plea, wherefore with force and arms the manor of *Marr*, with the appurtenances, and 20 messuages, 10 cottages, 400 acres of land, 400 acres of meadow, and 400 acres of pasture, with the appurtenances in *Marr*, *Bentley* and *Thorpe* in *Balne* in the county of *Tork*, which B. G. Esq; and A. his wife had demised to the said G. for a term which was not then passed, they entered, and him the said G. from his said farm ejected, and other injuries to him did, to the great damage of the said G. N. and against the peace of our said lord the present king; And whereupon the said G. N. by T. P. then his attorney complained, that whereas the said B. and A. on the 1st day of *October* in the 32d year of the reign of our said lord the king, at *Marr* afore said, had demised to the said G. N. the manor and tenements afore said, with the appurtenances, to have and to hold the manor and tenements afore said, with the appurtenances, to the said G. and his assigns, from the feast day of St. *Michael* the archangel then last past, until the full end and term of 5 years then next following and fully to be complete and ended; by virtue of which said demise the said G. N. had entered the manor and tenements afore said, with the appurtenances, and was thereof possessed, and being so thereof possessed, the said E. W. G. G.
R. M.

R. M. J. and J. afterwards, to wit, on the said 1st day of *October* in the 32d year aforesaid, with force and arms, &c. the manor and tenements aforesaid, with the appurtenances in form aforesaid demised to the said G. N. for a term which was not then passed, had entered, and him from his said farm had ejected; And other injuries, &c. to the great damage, &c. and against the peace, &c. Wherefore he then said that he was injured, and had damage to the value of 100*l.* And thereof he then brought suit, &c. And the said E. W. G. G. *Who pleaded R. M. J. and J. by T. L. then their attor- Not guilty.* ney, came and defended the force and injury when, &c. and then said that they were in nothing guilty of the trespass and ejectment aforesaid, as the said G. N. above declared against them, and of that they then put themselves upon the country; And the said G. N. then did so likewise. And thereupon the said process was *Process continued.* in such manner continued between the parties aforesaid, in the plea aforesaid, by the jurors being respited between them until from the day of *Easter* in 15 days then next following, unless the justices of *Nisi Prius.* our lord the king assigned to take the assizes in the county aforesaid, according to the form of the statute, to wit, on *Saturday* the 5th day of *March* then next before the said day, to wit, from the day of *Easter* in 15 days, at the castle of *Tork* in the county of *Tork* aforesaid, had first come; At which

said assizes, on the day and at the place
 aforesaid held before Sir *William Dol-*
ben Knt. one of the justices of our said lord
 the king assigned to hold pleas before the
 king himself, and Sir *William Gregory* Knt.
 one of the barons of the Exchequer of
 our said lord the king, justices of our lord
 the king assigned to take the assizes in the
 county aforesaid of *York*, the said issue
 was tried, and the jurors then and there
 chosen, tried and sworn to try the said is-
 sue, said upon their oath, that *E. W. G. G.*
R. M. J. and *J.* were guilty of the trespas
 and ejectment aforesaid, in manner
 and form as the said *G. N.* complained a-
 gainst them; And thereupon it was in
 such manner proceeded, that it was con-
 sidered by the same court of the Bench,
 that the said *G. N.* recovered against the
 said *E. W. G. G. R. M. J.* and *J.* the
 possession of his said term in the manor
 and tenements aforesaid, with the appur-
 tenances, then to come; And that the
 said *E. W. G. G. R. M. J.* and *J.*
 should be taken, as by the record of
 said recovery now remaining in the
 court of the Bench aforesaid more fully
 appears: And the said *G. N.* further
 says, that the said messuage, 60 acres
 of land, 40 acres of pasture, and 20
 acres of meadow, whereof the said
G. N. now complains against the said *E.*
 are parcel of the messuages, lands and te-
 nements mentioned in the said recovery,
 and

Trial.

*Verdict for
plaintiff,*

And judgment.

and not other nor different; Wherefore the said G. N. prays judgment if the said E. during the said term in the said record mentioned ought to be admitted to the said plea, contrary to the said recovery.

And the said E. as at first says, that *Rejoinder,* the said T. earl of H. and E. his wife in *That the earls* the right of the said E. and the said R. *in right of their* earl of S. and M. his wife in the right of *wives were* the said M. on the 24th day of *seised, and de-* January *pendant as* in the 32d year aforesaid, and continually *their servant* afterwards, until the 4th day of *entered, &c.* March in the said 35th year of the reign of the lord Charles II. late king of England, &c. were seised in their demesne, as of fee, of the tenements aforesaid, with the appurtenances last mentioned, in manner and form aforesaid, as the said E. above in pleading has alledged; and that she the said E. L. as servant of the said earls and their wives entered into the tenements aforesaid, with the appurtenances, and held the same, as she the said E. L. above in pleading has alledged: Wherefore for that the said G. N. has not denied the said matter pleaded in bar by the said E. nor answered thereto, the said E. L. prays judgment, and that the said G. N. may be precluded from his said action, &c.

And the said G. as to the said plea of *Demurrer.* the said E. above in rejoining pleaded, says, that that plea in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law

to preclude the said G. from having his said action against the said E. to which the said G. has no need, nor is he bound by the law of the land in any manner to answer; And this he is ready to verify: Wherefore for want of a sufficient plea of the said E. in this behalf the said G. prays judgment and his said damages, by the occasion aforesaid, to be adjudged to him, &c.

Joinder.

And the said E. says, that her said plea in manner and form aforesaid above in re-joining pleaded, and the matter therein contained, are good and sufficient in law to preclude the said G. from having his said action against the said E. Which said plea, and the matter therein contained, the said E. is ready to verify and prove, as the Court, &c. And because the said G. has not answered to the said plea, nor any ways hitherto denied the same, the said E. as at first, prays judgment; and that the said G. may be precluded from having his said action against the said E.

Continuance.

&c. And because the justices here will advise themselves of and upon the premisses, whereof the said parties have put themselves upon the judgment of the court, before they give judgment thereupon, day is given to the parties aforesaid here, until from the day of *Easter* in 15 days, to hear their judgment thereupon; for that the said justices here are not yet,

Unica taxatio. &c. And because it is convenient that
one

one taxation be made of the damages for the whole trespafs in one writ specified:

Therefore as well to try the said issue above ^{Ven. fac. tam} joined to be tried by the county, as to ^{ad triand.} inquire of the damages by occasion of the ^{quam ad in-} premisses, whereof the said parties have ^{quirend'.}

put themselves upon the judgment of the court as aforesaid, if judgment thereupon shall happen to be given for the said G. *It is commanded* to the sheriff that he cause to come here on the octave of the Purification of the Blessed Mary, twelve, &c. by whom, &c. And who neither, &c. To recognize, &c. Because as well, &c. *At Jury respited,*

which day the jury between the parties aforesaid in the plea aforesaid above by the country to be tried, was thereupon respited between them here until this day, *to wit,* to the said 15 days of *Easter* then next following, unless the justices of our lord the king assigned to take the assizes in the county aforesaid, by form of the said statute, on *Monday* the 9th day of *March* last past at the castle of *York* in the county aforesaid shall first come. *And now here* at this day comes as well the said G. as the said E. by their attornies aforesaid; And the said justices of assize, before whom, &c. sent here their record in these words: *Afterwards,* on the day ^{Postea.} and at the place within contained, before Sir *Edward Atkins*, Knight, one of the Barons of the *Exchequer* of our lord the king, and *Robert Wright*, one other of the

*Ap de cir-
cumſtantibus.*

*Verdict for
the plaintiff.*

the Barons of the *Exchequer* of our ſaid lord the king juſtices of our ſaid lord the king assigned to take the aſſizes in the county of *Tork*, by form of the ſtatute, &c. comes as well the within named *G. N.* as the within-written *E. L.* by their attornies within contained; And the jurors of the jury, whereof mention is within made, being demanded, ſome of them, to wit, *G. R. T. P. G. B. R. T. C. R. W. P.* and *J. S.* came and were ſworn on that jury; And becauſe the reſidue of the jurors of that jury did not appear, *Therefore* others of thoſe ſtanding around by the ſheriff of the county aforeſaid hereunto choſen at the requeſt of the ſaid *G. N.* and by the command of the ſaid juſtices, are added a-new, whoſe names are aſſiled in the within-written panel, according to the form of the ſtatute in ſuch caſe made and provided; And the jurors ſo added a-new, to wit, *W. P. M. W. J. H. J. D.* and *J. P.* being demanded, alſo come, who to ſpeak the truth of the within contents, together with the ſaid other jurors firſt impanelled and ſworn, being choſen, tried and ſworn, *As to the iſſue* between the parties aforeſaid within joined, whereof the ſaid *E.* ſaid that ſhe is not guilty thereof, they ſay upon their oath, that the ſaid *E.* is guilty thereof in manner and form as the ſaid *G.* within complains againſt her; And they aſſeſs the damages of the ſaid *G.* by occaſion thereof

thereof over and above his costs and charges by him about his suit in this behalf expended to 300 *l.* And as to the residue of the trespass within-mentioned, whereof the said parties have within put themselves on the judgment of the court, if it happens that judgment therein be given for the said G. against the said E. the said jury assess the damages of the said G. by the occasion of that trespass, over and above his costs and charges by him in and about his suit in this behalf expended to 200 *l.* and for those costs and charges to 40 *s.* And because the justices here will further advise themselves of and upon all and singular the said premisses before they give judgment thereon, day is further given to the parties aforesaid here until on the morrow of the holy Trinity, to hear their judgment thereupon, for that the said justices here are not yet, &c. At which day here came as well the said G. as the said E. by their attornies aforesaid, and because the justices here will further advise themselves of and upon all and singular the premisses aforesaid before they give judgment thereon, day is further given to the said parties here until from the day of St. Michael in three weeks, to hear their judgment thereon, for that the said justices here are not yet, &c. At which day here comes as well the said G. as the said E. by their attornies aforesaid; Whereupon all and singular the said premisses being

Contingent damages on the demurrer.

And Continuance.

Continuance.

Judgment for the plt. on the demurrer, &c.

ing seen, and by the court here fully understood, it seems to the said justices that the plea of the said *E.* in manner and form aforesaid above in rejoining pleaded, and the matter therein contained, are not sufficient in law to preclude the said *G.* from having his said action as the said *G.* within has alledged, *It is considered*, that the said *G.* recover against the said *E.* his several damages aforesaid to 500 *l.* and the said 40 *s.* assessed by the said jury in form aforesaid, and also 28 *l.* to the said *G.* at his request for his said costs and charges by the court here of increase adjudged, which said damages in the whole amount to 530 *l.* And the said *E.* is taken, &c.

Affirmed on error.

Declaration in trespass for cutting down a grove which was an ornament and defence to a messuage. C.B.

Gloucestershire, } *C. W.* Esq; was attached
to wit, } to answer *T. J.* Esq;
of a plea, wherefore whereas the said *T.*
by the space of seven years now last past
was and still is seised in his demesne as of
fee, of and in one capital messuage called
Sulley, and of and in a certain grove of
timber trees, to wit, oaks, ashes, elms
and beeches, lying contiguous to the same
messuage, with the appurtenances, in the
parish of *Lydney* in the county aforesaid,
which said grove was not only an orna-
ment, but also a defence to the said mes-
suage against winds, storms and tempests,
the said *C.* contriving and intending to
deprive

deprive the said *T.* of the benefit and advantage of the said grove, with force and arms entered into the said grove, and cut down and carried away trees to the value of 400 *l.* then growing there, and did other injuries to the said *T.* to the great damage of the said *T.* and against the peace of our lord the present king, &c.

And whereupon the said *T.* by *E. J.* who *Plt. an infant* is admitted by the court of our lord the *by prochien* king here to prosecute for the said *T.* be-amy.

ing under the age of 21 years, as next friend of the said *T.* complains, that *whereas* the said *T.* by the space of seven years now last past was and still is seised in his demesne as of fee of and in one capital messuage called *Sulley*, and of and in a certain grove of timber trees, *to wit*, oaks, ashes, elms and beeches, lying contiguous to the said messuage, with the appurtenances, in the parish of *Lydney*, in the county aforesaid; which said grove was not only an ornament to the said messuage, but also a defence to the said messuage against winds, storms and tempests, the said *C.* maliciously contriving and intending to deprive the said *T.* of the benefit and advantage of the said grove, on the ——— day of, &c. with force and arms entered into the said grove, and cut down and carried away the trees then growing there, *to wit*, 200 oaks, 200 ashes, 200 elms, and 200 beeches, to the value of 400 *l.* in continuing the said trespafs

trespass at divers days and times from the said ——— day of, &c. until the day of suing forth the original writ of the said *T. to wit*, the ——— day of, &c. and other injuries, &c. to the great damage, &c. and against the peace, &c. Wherefore he says, that he is injured and has damage to the value of 1000*l*. And thereupon he brings suit, &c.

INDEX.

INDEX.

A *Abatement*, Page 1 to 19

Account, 20 to 23

Addition.

The Want of it pleaded in
Abatement, 10

Administrators. See Executors.

1. Declaration by an Administrator, 164

2. ——— against Baron and Feme Executrix, 277

3. ——— against an Administrator, 280, 307

4. *Sci. Fā.* by an Administrator, 422, 478

5. Plea of *Plene Administravit*, 278, 298, 456

6. *Plene Administravit* generally, and a Judgment against the Executor on an Action of Covenant, 23, 123

7. Plea, Intestate indebted to Defendant, and therefore retains, 281

8. Plea, a Bond entered into by Intestate, Page 319

9. Several Judgments obtained against the Executor, &c. 123

Antient Demesne.

Pleaded, 12

Arbitration.

1. No Award pleaded, 54

2. Declaration in Case, *sur Assumpsit* to perform an Award, 168

Affault.

Declaration, 484

Attornies.

See Privilege.

1. Declaration against an Attorney *B. R.* 95, 105

2. ——— against an Attorney *C. B.* 112, 487

3. By

I N D E X.

- | | |
|---|---|
| <p>3. By an Attorney, C. B. Page 178, 188</p> <p>4. Judgment at the Suit of an Attorney, 373</p> <p>5. ——— against an Attorney, 375</p> | <p>5. Bar, in Debt for Rent against an Executor, that the Testator assigned, P. 341</p> <p>6. <i>Ne Unques ballivus</i>, in Account, 21</p> <p>7. Plea to a feigned Issue out of Chancery, 153</p> <p>8. Plea (in Case <i>sur Assumpsit</i> on a Promise of Marriage) offered to marry, 159</p> |
|---|---|

Avowry.

Vide *Replevin* in toto.

Bail.

Scire Facias against Bail, 469, 474, 478, 481

Bankrupt.

1. Bankruptcy pleaded, 30
2. Declaration by the Assignees, 100, 115, 199

Bar. 23 to 79

1. *Plene Administravit*, 278, 298, 456
2. By an Executor several Judgments recovered against him, several Bonds of Testator, &c. 123
3. Bar by Executor, the Testator indebted to Defendant, wherefore retains, 281
4. Bar in Debt by an Executor, *Non Detinet* and a Bond entered into by Testator, 309

9. *Non Assumpsit*, 160
10. *Non Assumpsit* and a Tender, 161
11. Not Guilty, in Case for Words, and a Justification, 190
12. *Liberum Tenementum*, 203
13. Bars in Covenant, 213, 219
14. Nothing passed by Assignment, in Covenant against Assignee, 226
15. *Nil Debet* in Debt *quiam*, 234, 242, 249, 254, 256
16. *Nul tiel Record*, 263, 268
17. *Nil Debet*, 303
18. Bar in Debt for Rent, that the Plaintiff entered into Part of the Premises, 321
19. *Nil habuit in Tenementis*, 329
20. Bar by Tertenants, that the Money was paid, and that the original Defendant was never seised, 425
21. By

I N D E X.

21. By Executors to a *Scire Facias*, a *Ca. Sa.* sued out against Testator and Executed, Page 460

22. Bar in Trespass, using a Way, 493

23. Bar in Trespass for shooting a Greyhound, justifying as Keeper of a Park, 503

24. Bar in Trespass, a License, 506

25. Bar in Trespass for mesne Profits, that *H.* and *S.* were seised in Fee, and by their Commandment entered, Replication the Judgment in Ejectment, 513

Baron and Feme. See Coverture.

1. Declaration by the Husband for Work done by the Wife, 109

2. ——— against the Husband for the Wife's Board, &c. 111

3. ——— in Trover against Baron and Feme, 201

4. ——— in Debt by Baron and Feme Administratrix, 277

5. ——— by Baron and Feme, against Baron and Feme Executrix, 291

6. ——— in Debt by Baron and Feme Executrix, 344

7. ——— by Baron and Feme Executrix, 345

8. ——— in Trespass against Husband and Wife, P. 505

Bill of Exchange, 86 to 95

Case, 79 to 205.

Certiorari.

To the Palace Court, 270

Challenge, 206.

Continuance.

1. By *Curia advisari vult.* 9, 12, 15, 50, 149, 182, 288, 314, 362, 520, 523

2. By *Vic' Non misit breve*, 243

3. ——— of a Writ of Inquiry, 386

Covenant.

Declarations, 206

Coverture.

Pleaded in Abatement, 1

County Palatine.

Mittimus, 299

Debt, 226 to 362.

Demurrer 263 to 268.

1. Demurrer to a Declaration, 182, 261, 361

M m 2. De-

I N D E X.

2. Demurrer to a Declaration in Part, *Page* 263
3. ——— to a Plea in Abatement, 11
4. ——— to a Plea of Ancient Demesne, 13
5. ——— to a Plea of Special *Non est Factum*, Bond being delivered as an Escrow, 49
6. ——— to a Special *Plene Administravit*, 313
7. ——— to a Plea to a *Scire Facias*, 437
8. ——— to one Plea and Replication to the others, 162
9. ——— to a Replication to a Plea in Abatement, 8
10. ——— to a Replication in Debt, 56
11. ——— to a Replication to a Special *Plene Administravit*, 147, 287
12. ——— to a Rejoinder, 519

Devisee.

1. Declaration against the Devisee, 293
2. Plea, not Devisee, 47, 294

Distringas.

On a Bill against a Member of Parliament, 296

Dower.

Scire Facias after brought in Dower, *Page* 447

Ejectment.

1. Release *Puis darrein Continuance* from the Lessor of the Plaintiff pleaded, 36
2. Judgments in Ejectment, 378, 379

Elegit.

Awarded, 387

Escrow.

Plea, Bond delivered as an Escrow, 48

Evidence.

Demurrer to Evidence, 364

Executors. See *Administrators.*

1. Declaration against an Executor, 103, 122, 297, 341
2. ——— by an Executor *durante Minoritate*, 179

3. Decla-

I N D E X.

3. Declaration by an Executor, *Page* 272, 344
4. *Scire Fieri* Inquiry against Executors, 451
5. *Scire Facias* against Executors, 458
6. ——— for Executors, 464
7. Plea, another Executor not named, 2
8. Judgment against an Executor, 376, 377, 380, 381

False Judgment.

Writ, 421

Habeas Corpus.

Entry of Bail on a *Habeas Corpus*, 472

Habere Facias Possessionem.

Awarded, 378, 393

Heir.

1. Declaration against the Heir, 293
2. Pleads that no Lands descended, 46
3. *Scire Facias* against an Heir, 422

Homine Replegiando, 371.

Demurrer to a Plea to it for want of Addition, 11

Impar lance, Pa. 2, 242, 281, 309, 375, 381, 406, 488.

To a Plea, 7

Infant.

1. Declaration by *Prochien Amy*, 524
2. Infancy pleaded in Abatement, 2, 4

Inquiry.

1. Awarded and returned, 373, 378
2. Awarded and continued by *Vic' non misit breve*, 386

Judgment, 372 to 395.

1. Of *Respondeas Ouster*, 15
2. Judgment by *Nil Dicit* against one Defendant, where two others pleaded, 31
3. ——— by *Nil Dicit* against an Heir, 294
4. ——— For not entering the Issue, 256
5. ——— by *Non Informatus* in Debt, 276
6. ——— on a Demurrer to a Replevin, 289

I N D E X.

7. Judgment on a Demurrer to a Plea, Page 316
8. ——— on a Demurrer to a Declaration, 362
9. ——— for not joining on Demurrer, 366
10. ——— on Verdict and Demurrer, 523

Justification.

1. In Assault, Defendant Master of a Sloop, and Plaintiff a Sailor, and neglected to do his Duty, 65
2. In Assault Justification under a Warrant, 74
3. In Case for Words, 78, 191

Liberum Tenementum, 203.

Memorandum.

1. Of a Bill in C. B. 112, 357, 487
2. Of a Declaration of a precedent Term, 236, 279, 307

Mesne Profits.

Declaration for recovery of mesne Profits, 511

Misnomer.

Pleaded in Abatement, Page 4, 5, 6, 7

Mittimus.

To a County Palatine, 299

Mutual Debt.

Pleaded, 39 to 43

Ne Unques Balivus.

Pleaded in Account, 21

Nil Dicit.

1. Judgment by *Nil Dicit* against one Debt. where two other Defendants plead, 31, 372
2. ——— by *Nil Dicit* in Case *sur Assumpsit* at the Suit of Attorney, 373
3. ——— by *Nil Dicit* in Trespass after the new Assignment, 374
4. ——— by *Nil Dicit* in Debt, 375
5. ——— by *Nil Dicit* in Debt against an Executor, 376
6. The

I N D E X.

6. The like with a *Remittitur* of Part, Page 377
 7. Judgment by *Nil Dicit* in Ejectment, 378

Nil habuit in Tenementis,
 327

Non Assumpsit.

1. *Non Assumpsit*, *Non Assumpsit infra sex Annos*; and that Defendant was a Bankrupt, &c. 30
2. *Non Assumpsit* by two Defendants, and Judgment by *Nil Dicit* against a third Defendant, 31
3. *Non Assumpsit* and Notice to set off a Debt, 40
4. *Non Assumpsit* to one Count, 160
5. ——— to Part, 161

Non Assumpsit infra sex Annos.

1. Pledged, 29
2. *Non Assumpsit*, *Non Assumpsit infra sex Annos*, and that Defendant was a Bankrupt, &c. 30

Non Cepit, 371.

Non Compos Mentis.

Pledged by the Executor of the Obligor, Page 45

Non Debet, 242, 503:

1. Pledged to Part, 50
2. In Debt *qui tam*, 234, 249, 254, 256

Non Detiner.

Pledged to Part, 309

Non est Factum, 381.

Bond being delivered as an Escrow 49

Non sum Informatus.

Judgments, 379

Not Guilty.

1. In Ejectment, 15
2. In Trespass and Assault, 61, 67, 73, 74, 488
3. Not Guilty to Part, 57, 66, 191, 492, 503, 506, 512

Notice.

I N D E X.

Notice.

1. To set off a Debt, Page 40
2. To a Declaration in Ejectment, 370

Nul tiel Record.

1. Replied, 33, 38
2. Pleded in Part, 263
3. Pleded, 268

Outlawry.

In the Plaintiff pleaded, 37

Oyer.

1. Of an Original in *Homine Replegiando*, 10
2. Of a Writ, 365

Plea.

See *Abatement*, Bar.

Plene Administravit.

1. *Plene Adm.* generally, and a Judgment recovered against Executor, 13

2. Several Judgments recovered against Executor, &c. Page 123

3. *Plene Administravit*, 278, 298, 456

4. ——— by Retainer, 281

Pone.

In Replevin, 420

Postea, 244, 250, 395 to 400, 521

Privilege.

1. Of a Prothonotary's Clerk pleaded in Abatement, 18
2. Bill against a Member of Parliament, 293

Profert.

1. Of Administration, 167
2. Of Deeds, 207, 215, 221, 281, &c.
3. Of Letters Testamentary, 274

Promissory Notes.

See fol. 100, &c.

Rebutter.

I N D E X.

<i>Rebutter</i> , Page 369.	<i>Scire Facias</i> , Pa. 422 to 483.
<i>Recordare Facias Loquelam</i> , 418	1. Judgment thereon against Tertenants, 387
<i>Release</i> .	2. Judgment on <i>Scire Facias</i> , 388
<i>Puis darrein Continuance</i> in in Ejectment from the Lei- for of the Plaintiff plead- ed, 36	<i>Scire Fieri Inquiry</i> , 451.
<i>Relicta Verificatione</i> , 380, 381	<i>Summons</i> .
<i>Remittitur</i> , 377	On a Bill against a Member of Parliament, 295
<i>Replevin</i> , 401 to 421	<i>Surrebutter</i> , 340.
Judgment, 382	<i>Tender</i> .
<i>Respondeas Ouster</i> ,	Tender to Part, 51, 161
Judgment of, 15, 385	<i>Tertenants</i> .
<i>Satisfaction</i> .	<i>Sci. Fa.</i> against Tertenants, 422
Acknowledged, 276, 290	<i>Trespass</i> , 483 to 525.
<i>Scandalum Magnatum</i> .	<i>Trover</i> .
Declaration, 182	Declarations, 199, &c.
	<i>Venire</i>

I N D E X.

Venire Facias.

1. Awarded, Page 16, 221, 235, 340
2. *Tam ad triena quam ad inquirenda.* 32, 520
3. To try two Issues, 72
4. To the Sheriff of the County where the Land lies, 322

Verdict, Page 245, 251.

Unica Taxatio, 31, 373, 520

Usury.

1. Pledged, 43
2. Declaration on the Statute of Usury, 257

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